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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 296.

ROBERT M. YARDLEY, RECEIVER OF THE KEYSTONE NATIONAL BANK, APPELLANT,

vs.

GEORGE PHILLER, PRESIDENT FIRST NATIONAL BANK, ET AL., BEING THE CLEARING HOUSE COMMITTEE OF THE CLEARING HOUSE ASSOCIATION OF THE BANKS OF PHILADELPHIA.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FILED JULY 2, 1895.

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1 United States Circuit Court of Appeals, Third Circuit.

Be it remembered that on the nineteenth day of February, in the year of our Lord one thousand eight hundred and ninety-four, A. T. Freedley, Esq., and John G. Johnson, Esq., attorneys for appellants, appeared in court and files a transcript of record pursuant to an appeal in the case of George Philler, president First National bank, chairman; Benjamin B. Comegys, president Philadelphia National bank; Henry C. Stroup, cashier Farmers' and Mechanics' National bank; Jacob Naylor, president Eighth National bank; John H. Michener, president Bank of North America; George M. Troutman, president Central National bank; James V. Watson, president Consolidation National bank, being the Clearing House committee of the Clearing House Association of the Banks of Philadelphia, appellants, *vs.* Robert M. Yardley, receiver of the Keystone National bank, which, being read, is in the words and figures following, to wit:

2 Circuit Court of the United States, Eastern District of Pennsylvania.

ROBERT M. YARDLEY, Receiver of the Keystone National Bank,
vs.
GEORGE PHILLER, President First National Bank, Chairman, *et al.*
} No. 44. Oct. Sess., 1891.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania*, } *ss:*

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of October sessions, 1891. No. 44.

It is thus contained:

Be it remembered, that on the second day of February, A. D. 1892, Robert M. Yardley, receiver of the Keystone National bank, by his solicitor, John R. Read, Esquire, comes into court here and files his bill of complaint against George Philler, president of the First National bank, chairman, *et al.*, which, being read, is in the words and figures following, to wit:

3 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity. Of October Sessions, 1891.

Between—

ROBERT M. YARDLEY, Receiver of the Keystone National Bank,
vs.
GEORGE PHILLER, President First National Bank, Chairman; Benjamin B. Comegys, President Philadelphia National Bank; Henry C. Stroup, Cashier Farmers' and Mechanics' National Bank; Jacob Naylor, President Eighth National Bank; John H. Michener, President Bank of North America; George M. Troutman, President Central National Bank; Jas. V. Watson, President Consolidation National Bank, Being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia. } No. —.

To the honorable the judges of the said court:

Robert M. Yardley, receiver of the Keystone National bank, files this his bill of complaint against the defendants above named, and avers:

4 I. The Keystone National bank is a corporation which was on or about the first day of July, A. D. 1875, duly organized and incorporated under and pursuant to the acts of Congress in that behalf enacted, having its place of business in the city of Philadelphia, within the eastern district of Pennsylvania, and commenced business as such, and continuously carried on the same until the twentieth day of March, A. D. 1891, during all which time it was a member of the Clearing House Association of the City of Philadelphia.

II. On the twentieth day of March, A. D. 1891, and for a long time prior thereto, the said Keystone National bank became and was insolvent, and so that upon the said day last mentioned, the said bank was closed by order of the Comptroller of the Currency of the United States, issued under and pursuant to the power and authority it that behalf conferred upon him by the acts of Congress of the United States in that behalf enacted, and possession of the assets of said bank was upon that day taken by William P. Drew, examiner of national bank duly appointed, acting therein by virtue of the authority of the order of the Comptroller of the Currency of the United States duly issued. And thereafter, to wit, upon the ninth day of May, A. D. 1891, said Robert M. Yardley, plaintiff herein, was duly appointed by the Comptroller of the Currency of the United States receiver of said Keystone National bank, and has since duly qualified and entered upon the discharge of his duties as such, and from thence hitherto has and still does discharge the same.

III. The Clearing House Association of the City of Philadelphia is an association of national banks of that city, having a central office therein, whereat the exchanges between said banks are effected daily and the course of business adopted by agreement of the members thereof and usually and constantly carried on is substantially as follows:

5 At or about 8.30 o'clock a. m. of each day, each national bank member thereof sends by its runner or agent to said clearing-house all checks and drafts received by it since the last clearance drawn upon any other bank, member of said association, or which clears through it, and receives in return all checks and drafts drawn upon it deposited with any other bank member of said clearing-house, or which clears through it, and which said checks and drafts are then and there delivered to the runners or agents of the respective banks upon which the same are drawn, upon the promise and agreement of said banks respectively, that they will at or before 12 o'clock of that day pay to said Clearing House Association in cash the difference between the amount of the checks and drafts so deposited by it and the amount of the checks and drafts so drawn upon it as aforesaid, and at that time and out of the moneys so received said Clearing House Association pays in cash to the banks found to be creditors upon the clearances the sum, which is so found to be due them thereon.

IV. Of the defendants, George Philler is the president of the First National bank; Benjamin B. Comegys is the president of the Philadelphia National bank; Henry C. Stroup is the cashier of the Farmers' and Mechanics' National bank; Jacob Naylor is the president of the Eighth National bank; John N. Michener is the president of the Bank of North America; George M. Troutman is the president of the Central National bank, and James V. Watson is the president of the Consolidation National bank, and together they form and constitute the Clearing House committee of the Clearing House Association of the Banks of Philadelphia and sue and are sued as such; and under the articles of association adopted by and governing said association are given and entrusted with the entire charge, care, management and control of the

6 clearing-house affairs and transactions and the custody and control of the funds and securities belonging to or deposited with it.

V. On or about the second day of December, A. D. 1890, there was great stringency in the money market in the city of Philadelphia and difficulty in securing the requisite amount of actual cash for the purpose of conducting the usual and customary business of the national banks in that city, and at that time said Clearing House Association agreed to issue its certificates in favor of the banks, members thereof, which certificates could be used, and were by common consent accepted as cash for all purposes for which the same might be required, and for which said certificates said Clearing House Association demanded and received adequate security before issuing the same.

VI. On or about the second day of December, A. D. 1890, said

Keystone National bank applied to said Clearing House Association for a large amount of said certificates, and then or thereafter at sundry times deposited with it commercial paper and notes held by it or given by others to it for this purpose, and obtained in return therefor said clearing-house certificates to the amount of about $730,000, for the repayment of which said commercial paper and notes above mentioned were specifically pledged; thereafter from time to time said clearing-house certificates were cancelled by said Clearing House Association as and when and to the extent that payments were made by said Keystone National bank thereon, and also to the additional extent of the sums to which it was from time to time entitled as the balance in its favor in its daily clearances with said Clearing House Association as above mentioned, but on which indebtedness for said certificates there was on the twentieth day of March, A. D. 1891, a balance still due by said Keystone National bank to said Clearing House Association.

7 VII. Prior to the first day of December, A. D. 1890, said Clearing House Association demanded that said Keystone National bank should deposit with it security for such amounts as might reasonably be expected to be the sum of the balance against it in the daily clearances as usually transacted, and for the purpose of securing the payment at or before 12 o'clock of each day of whatever balance might appear to be due by said Keystone National bank to said Clearing House Association as the result of the clearings made at 8.30 o'clock a. m. of that day, or in due course of the clearings made at 11.30 o'clock a. m. of each day, and for that purpose said Keystone National bank did then deposit with said Clearing House committee bonds of the Baltimore Traction Railway Company of the par value of $100,000, which said bonds were specifically pledged with said Clearing House Association as collateral security for the payment by said Keystone National bank of its said daily balances as aforesaid and for no other purpose.

VIII. On the morning of the twentieth day of March, A. D. 1891, said Keystone National bank made up, as usual, for exchange and clearance, at the clearing-house, a package of the checks and drafts upon other banks, members thereof, or which cleared through it, which had been deposited with it on the previous day or received by it from the post-office on that morning and amounting in the aggregate to the sum of about $70,000, and which said package was then, and upon that day, taken by the runner of said Keystone National bank to the office of said Clearing House Association at the usual hour of 8.30 o'clock a. m. Upon the settlement of the exchanges then and there made, it was found that the checks and drafts drawn upon said Keystone National bank and transmitted for collection by the other banks, members thereof, to said Clearing House Association, together with a balance due on the settlement made the previous day, at 11.30 o'clock a. m., exceeded by

8 the sum of about $40,000, the amount of the checks and drafts held by the said Keystone National bank and so deposited by it for collection with said Clearing House Association, and thereupon said Clearing House Association retained said checks and

drafts so drawn upon said Keystone National bank, amounting to the sum of (about) $87,000, and demanded payment in cash from said Keystone National bank of the difference before delivering the same to it.

IX. Thereupon the runner or agent of said Keystone National bank immediately returned to said bank for the purpose of obtaining said sum of about $40,000, necessary to pay the balance due by it as aforesaid, but while said sum was being made up, and shortly after 10 o'clock of that day, said Keystone National bank was closed by William P. Drew, examiner of national bank, duly appointed and acting therein by virtue of the authority of the order of the Comptroller of the Currency of the United States duly issued and pursuant to the statutes in such case made and provided.

X. Thereupon said Clearing House Association, after learning of the closing of the said Keystone National bank as aforesaid, and after notice and with full knowledge of its insolvency returned to the various banks which had presented the same said checks and drafts, amounting to the sum of (about) $87,000, drawn upon said Keystone National bank and transmitted by them for collection and retained, appropriated and applied to its own use the said checks and drafts therefore held by said Keystone National bank and that day deposited by it with said Clearing House Association as aforesaid, and applied the same to its own use and also then and there appropriated and applied to its own use the said bonds of the Baltimore Traction Railway Company of the par value of $100,000 above mentioned, theretofore deposited by said Keystone National bank with it specifically as security for its daily balances and for no other purpose, as hereinbefore fully averred and set forth.

9 XI. Plaintiff further saith that said Keystone National bank was on said twentieth day of March, A. D. 1891, wholly insolvent, and that the fact of its said insolvency was then and there known to said Clearing House Association and avers that said retention and appropriation of the said bonds of the Baltimore Traction Railway Company and of said checks and drafts, amounting to the sum of about $70,000, was contrary to and prohibited by the statutes of the United States in such case made and provided, and that thereupon and by virtue of said statutes, said plaintiff, as receiver, was and is entitled to receive from said Clearing House Association said bonds of the Baltimore Traction Railway Company less the amount of said balance due on the settlement made on the nineteenth day of March, as aforesaid, and said checks and drafts sent by said Keystone National bank to said Clearing House Association, on the twentieth day of March, 1891, for exchange as aforesaid, and which were then and there retained by said Clearing House Association and applied and appropriated to its own use as aforesaid, or the proceeds of such as have been collected, and hath demanded the return thereof, but said Clearing House Association has and still does refuse to return or in any way account for the same, and on the contrary asserts that it has the right to retain the same in pay-

ment of a balance alleged to be due to it by said Keystone National bank upon its certificates heretofor- issued by it to said Keystone National bank as aforesaid.

XII. Your orator further saith that he has no knowledge or means of knowledge of the precise amount, if any, due by the said Keystone National bank, as its daily balance on the settlement made as aforesaid on the nineteenth day of March, and is unable to specify the same, and has no knowledge or means of knowledge. And your orator further saith that he has no knowledge or means of knowledge of the precise items included in the package of checks, drafts, etc., delivered to said Clearing House committee, on
10 said twentieth day of March, and retained by them as aforesaid, nor of the exact total of the same, and that he has no adequate remedy at law.

Wherefor-, plaintiff needs equitable relief as follows:

I. That the defendants full, true and perfect discovery make of all and singular the transactions aforesaid and of the amount of the daily balance due on said settlement of the nineteenth day of March, 1891, and of the items received by them on said twentieth day of March, as aforesaid, and the total amount thereof.

II. That said Clearing House Association be decreed to deliver to plaintiff said 100 bonds of the Baltimore Traction Railway Company above mentioned, or the balance thereof, after the deduction of any daily balances remaining due and unpaid, and to deliver to it all and singular the checks and drafts sent by said Keystone National bank to said Clearing House Association, on the twentieth day of March, 1891, for exchange as aforesaid, and which were then and there retained by said Clearing House Association, and applied and appropriated to its own use as aforesaid, or in the alternative to pay to the plaintiff the amount collected thereon, with interest, from the date of such collection.

III. General relief.

And he will ever pray, etc.

ROBERT M. YARDLEY,
Receiver Keystone National Bank.

JOHN R. READ.

EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Robert M. Yardley being duly sworn according to law, doth depose and say, that the facts alleged in the foregoing bill of complaint are true to the best and utmost of his knowledge, information and belief.

Sworn to and subscribed before me this — day of January, A. D. 1892.

——— ———.

11 Endorsed: No. 44. October sessions, 1891, in the circuit court of the United States for the eastern district of Pennsylvania, in equity. Between Robert M. Yardley, receiver of the

Keystone National bank, *vs.* George Philler, president of First National bank, chairman; Benjamin B. Comegys, president Philadelphia National bank; Henry C. Stroup, cashier Farmers' and Mechanics' National bank; Jacob Naylor, president Eighth National bank; John H. Michener, president Bank of North America; George M. Troutman, president Central National bank; Jas. V. Watson, president Consolidation National bank, being the Clearing House Association of the Banks of Philadelphia. Bill. John R. Read. Filed February 2, 1892. Samuel Bell, clerk.

And afterwards, to wit: on the 6th day of May, A. D. 1892, the defendants, by their counsel, A. T. Freedley, Esquire, and John G. Johnson, Esquire, come into court here and file their answer, which being read, is in the words and figures following, to wit:

12 In the Circuit Court of the United States for the Eastern District of Pennsylvania. In Equity. Of October Sessions, 1891.

Between—

ROBERT M. YARDLEY, Receiver of the Keystone National Bank,

vs.

GEORGE PHILLER, President First National Bank, Chairman; Benjamin B. Comegys, President Philadelphia National Bank; Henry C. Stroup, Cashier Farmers' and Mechanics' National Bank; Jacob Naylor, President Eighth National Bank; John H. Michener, President Bank of North America; George M. Troutman, President Central National Bank; James V. Watson, President Consolidation National Bank, Being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia. } No. —.

Answer of the Defendants.

1. We do not know when the Keystone National bank was organized, but the date it joined the Clearing House Association was June 15th, 1880.

2. We believe the facts stated in the second paragraph of the bill of complaint to be true, but for greater certainty pray that if
13 material the same may be duly proved. We had, however, no knowledge of the insolvency of the Keystone National bank before the twentieth day of March, 1891, and, in fact, shortly prior to that time we were officially informed that it was a solvent institution.

3. The Clearing House Association of the City of Philadelphia is a voluntary, unincorporated association of national banks of that city. The main object of the association is one of convenience to its members, the purpose being to facilitate prompt and rapid exchanges of checks and drafts between the respective banks whereon the same are drawn, and this is effected by having these exchanges

made at one place known as the clearing-house, instead of requiring each bank to send its runners and clerks separately to the forty national banks composing the association, which are scattered over a wide area. The exchanges are made directly between the runners and clerks of the different banks, and neither we nor any manager, officer, or clerk on behalf of the association have anything to do with effecting the said exchanges. We never collect the proceeds of any drafts, checks, or other evidences of indebtedness exchanged between the different banks, and in fact have no connection therewith. The manner in which the business is transacted is as follows:

At 8.30 a. m. of each business day each of the forty national banks, members of the said association, sends two runners or clerks to the room provided for the purpose of making the exchanges. These several bank runners or clerks bring with them sealed packages, which under the rules of the association must be "well gummed and sealed with wax, and indorsed with ink or indelible pencil." These sealed packages have indorsed thereon the gross total of the checks and drafts which are supposed to be contained therein, and the name of the bank upon which they are drawn. These packages are delivered from the runner or clerk of the bank holding them to the runners or clerks of the banks whose names appear thereon by indorsement, and those runners or clerks take them directly to their own banks, where the packages are opened. If any one of the packages does not contain the amount of the checks
14 or drafts indorsed thereon it is settled directly between the banks themselves. It is not reported to us and we have no connection with it. After the packages are all delivered and exchanged between the banks a statement is made by the several bank runners or clerks delivering and receiving the same of the gross total indorsed on the packages, and this is handed to the manager of the association, who makes a record thereof, debiting or crediting each bank with the balance appearing to be due to or from such bank as the result of the whole exchange; and at twelve o'clock the debtor banks make good the amount charged against them, which is distributed amongst the creditor banks in the proportion to which they are entitled to the said credits. At half past eleven another exchange is effected between the different banks in the manner hereinbefore set forth, and for the balances due on that exchange by the different debtor banks the runners or clerks of such debtor banks give a memorandum of their indebtedness, known as a runner's exchange due bill, which is charged against the debtor banks in the exchange made upon the following morning at 8.30. Throughout the entire transaction, as hereinbefore stated, neither we nor any member, or officer, or clerk of the association act in any manner as agent for the collection or receipt of the checks and drafts, or other evidences of indebtedness exchanged between the banks, but the transactions are directly between the different banks themselves.

4. We admit the averments contained in the fourth paragraph of the bill of complaint.

5. We admit the averments contained in the fifth paragraph of the bill of complaint, except that the certificates therein referred to were issued largely in November as well as in December, 1890, and were issued by us under and by virtue of certain resolutions of the said association and of this committee, defendants, hereinafter set forth in the seventh paragraph of this answer, and the securities upon which we made the advances were received and held by us upon special trust in accordance with the said resolutions.

15 These advances were only made, and the certificates therefor only issued to banks which were members of the Clearing House Association.

6. We admit the averments contained in the sixth paragraph of the bill of complaint, except that all commercial paper deposited with us as security for the advances which we made thereon was deposited with us at the time the advances were made, and the advances were made upon the faith of the securities so deposited. No securities were deposited with us thereafter, save in substitution or lieu of other securities which had matured, and which were thereupon surrendered in consideration of receiving the said substituted securities, and for each security which we received we gave value therefor.

7. We deny that the bonds of the Baltimore Traction Railway Company of the par value of $100,000 were pledged as collateral security for the payment by the Keystone National bank of its daily balances. The facts were these: On December 2d, 1890, the president of the Keystone National bank brought to us coupon bonds of the Baltimore Traction Railway Company of the par value of $100,000, together with $264,507.16 of bills receivable, and requested that we should thereon advance the Keystone National bank the sum of $360,000. We accordingly did so, and the said securities were specifically pledged with us as security for the repayment of the advances which we made thereon, and the following receipt was given therefor on our behalf, viz:—

"PHILADELPHIA, *December 2d*, 1890.

"Received from Keystone National bank securities amounting to $100,000, which that bank has hypothecated with the Clearing House committee, in conformity with the terms of the agreement entered into by the banks of this city on the 24th of September, 1873, as amended October 18th, 1873.

"Statement of the securities:—

"$100,000 Baltimore Traction Company five per cent. coupon bonds.

"JOHN C. BOYD,
"*For the Committee.*"

16 The agreement of the various banks, members of the Clearing House Association of Philadelphia, of September 24th, 1873, as amended October 18th, 1873, recited in the foregoing receipt, is as follows:

"For the purpose of enabling the banks, members of the Philadelphia Clearing House Association, to afford proper assistance to the mercantile and manufacturing community, and also to facilitate the interbank settlements resulting from their daily exchanges, we, the undersigned, do bind ourselves by the following agreement on the part of our respective banks, viz:—

"First. That the Clearing House committee be, and they are hereby, authorized to issue to any bank, member of the association, loan certificates bearing six per cent. interest on the deposits of bills receivable and other securities to such an amount and to such percentage thereof as may in their judgment be advisable.

"These certificates may be used in settlement of balances at the clearing-house, and they shall be received by creditor banks in the same proportion that they bear to the aggregate amount of the debtor balances paid at the clearing-house. The interest that may accrue upon these certificates shall be apportioned monthly among the banks which shall have held them during that time.

"Second. The securities deposited with the said committee shall be held by them in trust as a special deposit, pledged for the redemption of the certificates issued thereupon, the same being accepted by the committee as collateral security, with the express condition that neither the Clearing House Association, the Clearing House committee, nor any member thereof, shall be responsible for any loss on said collaterals arising from failure to make, demand and protest, or from any other neglect or omission, other than the refusal to take some reasonable step which the said depositing bank may have previously required in writing.

"Third. On the surrender of such certificates, or any of them, by the depositing bank, the committee will indorse the amount
17 as a payment on the obligation of said bank held by them, and will surrender a proportionate amount of securities, except in case of default of the bank in any of its transactions through the clearing-house; in which case the securities will be applied by the committee, first, to the payment of outstanding certificates, with interest; next, to the liquidation of any indebtedness of such bank to the other banks, members of the Clearing House Association.

"Fourth. The committee shall be authorized to exchange any portion of said securities for others, to be approved by them, and shall have power to demand additional security, at their own discretion.

"Fifth. That the Clearing House committee be authorized to carry into full effect this agreement, with power to establish such rules and regulations for the practical working thereof as they may deem necessary; and any loss caused by the non-payment of loan certificates shall be assessed by the committee upon all the banks in the ratio of capital.

"Sixth. The expenses incurred in carrying out this agreement shall be assessed upon the banks in equal proportion to their respective capital.

"Seventh. That the Clearing House committee be, and they are hereby, authorized to terminate this agreement upon giving thirty

days' notice thereof at any stated meeting of the Clearing House Association.

"(Signed by all banks, members of the association.)

"PHILADELPHIA, *November 18th*, 1890.

"At a meeting of the Clearing House committee, held this day, it was, on motion—

"Resolved, That in accordance with resolutions of September 24th, 1873, as amended October 18th, 1873, the Clearing House committee will issue loan certificates to banks applying, and receive them in payment of balances.

"JOHN C. BOYD, *Manager.*"

We deny that the Baltimore Traction Railway Company bonds were pledged as security for the daily balances due by the
18 Keystone National bank. They were pledged upon the terms recited in the foregoing receipt and agreement.

8. On March 20th, 1890, at 8.30 a. m., the runner and clerk of the Keystone National bank appeared at the clearing-house with sealed envelopes in accordance with the custom of business fully set forth in paragraph three hereof. The total purported to be contained in these sealed envelopes was $70.005.46, and these were delivered by the runner and clerk of the Keystone National bank to the runners and clerks of the other banks which by the indorsements upon the packages appeared to be entitled to receive the same. As we have hereinbefore stated, they were never deposited with or delivered to us, or with or to the Clearing House Association. We had nothing to do with the collection or receipt of the same, but they passed directly between the respective banks. We have no knowledge of what the sealed envelopes contained, and if, as averred by the plaintiff, they contained items received from the post-office upon that morning, then such packages were made up in violation of the rules of the association, as such rules specifically provide that the packages shall only contain items received by the exchanging banks on the day previous to the exchange, and no items received on the day the exchange is effected are allowed to be included therein. The sealed envelopes and packages held by the various runners and clerks of other banks against the Keystone National bank purporting to amount to $117,035.21 were delivered by the runners of the several banks who held the same to the runner of the Keystone National bank. These packages were temporarily left by the runner of the Keystone National bank in the vaults of the clearing-house until the Keystone National bank should make good the amount of its debtor balance on this exchange, and its debtor balances on the exchanges effected on March 19th, 1891. The above amounts were not made good by the Keystone National bank, and shortly after 10 a. m. of that day we were informed that the Keystone National bank had been closed
19 by the bank examiner, and accordingly the sealed packages held by other banks and purporting to contain checks and drafts drawn upon the Keystone National bank were taken back

by the various runners and clerks of the respective banks who held the same.

9. We have no knowledge of the facts stated in the ninth paragraph of the bill of complaint, and pray that if material the same may be duly proved.

10. As we have hereinbefore stated, no checks or drafts upon the Keystone National bank were upon the 20th of March, 1891, or at any other time, deposited with us or with the association for collection. The checks and drafts held by other banks upon the Keystone National bank were taken back by those other banks because the Keystone National bank had not settled the balances due by it to such other banks, and such course is the only proper course to be pursued. Otherwise, the banks holding the claims against the Keystone National bank might themselves have been liable to their own depositors for the amount of the checks and drafts which the said banks held against the Keystone National bank, and which had been deposited with the said banks for collection in the usual course of business. We deny that we appropriated and applied to our use, or to the use of the association, checks and drafts held by the Keystone National bank; and we deny that we ever received any checks and drafts from the Keystone National bank on the said 20th of March, 1891, or that any such checks and drafts were deposited with us or with the said association. The checks and drafts held by the Keystone National bank, and presented at the morning exchange of March 20th, 1891, were delivered by the runner or clerk of the said Keystone National bank to the respective banks whose names were indorsed upon the sealed packages so held by the Keystone National bank, and the latter received credit therefor. This credit amounted to the sum of $70,005.46. At this time the Keystone National bank was indebted in the sum of $41,197.36 for its debtor balances and due bills upon the previous day, viz., March 19th, 1891, and in the sum of over $335,000 for advances made to it under the terms of the resolution set forth in paragraph 7 hereof. The said credit of $70,005.46 was therefore, to the extent of $41,197.36, applied in reduction of the indebtedness of the Keystone National bank for its debtor balances and due bills upon the previous day, viz., March 19th, 1891, and distributed amongst the several banks in proportion to the amounts to which they were respectively entitled to receive credit therefor, and the residue thereof, to wit, $28,808.10, was applied in partial reduction of the loans made to the Keystone National bank, as recited in the seventh paragraph hereof.

We deny that the $100,000 Baltimore Traction Railway Company bonds were deposited with us as security for daily balances due by the Keystone National bank. As hereinbefore stated, these bonds were deposited under the terms of the receipt and agreements recited in the seventh paragraph of this answer, and upon March 24th, 1891, the said bonds were sold through Messrs. Drexel & Co., and realized the sum of $94,000, which money was applied by us in partial repayment of the advance which we had made upon the said

bonds, in accordance with the terms of the agreement whereon they were pledged.

11. We deny that the retention and appropriation of the Baltimore Traction Railway Company bonds, or of the credit of $70,005.46, or any part thereof, was in violation of any statute of the United States.

Wherefore the defendants pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

A. T. FREEDLEY,
JOHN G. JOHNSON,
For Defendants.

21 George Philler, being duly sworn, says: I am the chairman of the Clearing House committee, and the facts above set forth, so far as stated upon my own knowledge, are just and true, and so far as stated upon information derived from others I believe them to be true.

GEORGE PHILLER.

Sworn and subscribed before me, this sixth day of May, A. D. 1892.

[SEAL.] A. S. RUTHERFORD,
Notary Public.

22 No. 44 of October sessions, 1891. In the circuit court of the United States for the eastern district of Pennsylvania. In equity. Between Robert M. Yardley, receiver of the Keystone National bank, *vs.* George Philler, president First National bank, chairman; Benjamin B. Comegys, president Philadelphia National bank; Henry C. Stroup, cashier Farmers' and Mechanics' National bank; Jacob Naylor, president Eighth National bank; John H. Michener, president Bank of North America; George M. Troutman, president Central National bank; James V. Watson, president Consolidation National bank, being the Clearing House committee of the Clearing House Association of the Banks of Philadelphia. Defendants' answer. A. T. Freedley. John G. Johnson.

23 In the Circuit Court of the United States, Eastern District of Pennsylvania, October Sessions, 1891. In Equity.

ROBERT M. YARDLEY, Receiver of the Keystone National Bank,
vs.
GEORGE PHILLER, President First National Bank, Chairman, *et al.*, Being the Clearing House Association of the Banks of Philadelphia. } No. 44.

Testimony taken at the office of Silas W. Pettit, Esq., Brown Bros. building, Fourth and Chestnut street-, Philadelphia, on Wednesday, November 16, 1892, at 3 o'clock p. m.

Present: Silas W. Pettit, Esq., for the plaintiff; Angelo T. Freedley, Esq., for defendants.

24 JOHN C. BOYD, being duly sworn, testified as follows on examination:

By Mr. PETTIT:

Q. What is your connection with the Clearing House Association?

A. I am manager of the association.

Q. How long have you been such?

A. Since 1885; seven years.

Q. Of what banks is the clearing-house composed?

A. Thirty-eight in number, being all the national banks in the city of Philadelphia.

Q. And no banks, not national banks, are members of it?

A. No, sir.

Q. Please state the course of business, that is to say, the method pursued in making the clearances daily between the banks and the clearing-house.

A. Each bank sends two representatives at half past eight o'clock in the morning to the clearing-house, together with the exchanges in sealed envelopes. These envelopes constitute the amount brought or total credit at half past eight. The packages are distributed to the respective banks to which they belong, and a receipt taken for each package. The clerk of the sending bank, called the settling clerk of the different banks, then proceeds to schedule the amount of the packages received, and the difference arising between
25 the amount brought and the amount received constitutes the balance, which is either a debtor or creditor balance.

The debtor balances are paid in to the manager between the hours of half past eleven and twelve and at twelve o'clock he distributes the same to the respective creditor banks. That is the workings of the exchange in few words.

Q. Is there any other clearance?

A. I have given you the description of the a. m. exchange. Then there is what is known as the runners' exchange which takes place at half past eleven, which is comprised of the items of morning mail received too late to put in the morning exchange.

Q. I understand then that the only clearance that is made by the association is that made in the morning at 8.30 a. m., and that which you call the runners' exchange, made at 11.30 a. m., is a matter between the banks exclusively, or does that also pass through the hands of the manager?

A. The settlement of the runners' exchange is made not in cash, but by due bill or check, which comes in the following morning's exchange.

Q. And who gives the due bill or check?

A. The debtor bank gives the due bill, which the manager deposits in his depositary, and he draws against this amount his check as manager in favor of the creditor bank.

Q. Where is the manager's depositary?

A. The Philadelphia bank.

Q. And in what name is that deposit kept?

A. John C. Boyd, manager.

Q. To illustrate this a little more clearly: I understand in your previous answer, where you used the word "exchanges," you
26 mean packages of checks or drafts drawn on banks members of the clearing-house, which a bank member of the clearing-house presents at the morning clearance?

A. That constitutes the exchange. That is what I mean by exchanges; these sealed packages of checks constitute the exchanges.

Q. The Keystone National bank was a member of the clearing-house; was it not?

A. It was.

Q. For about how long before its failure?

A. They were admitted on the 15th of June, 1880, until 1891—eleven years.

Q. Then, as I understand the course of business in the clearing-house, at half past eight in the morning, the Keystone bank sent to the clearing-house all the checks deposited in it which were drawn on banks members of the clearing-house?

A. It did. When you say all, it is a little too broad, perhaps; I would say those that they chose to send, because there might be some that did not come; all that they saw fit to send.

Q. Say "checks" then; leave out the word all?

A. Yes, sir.

Q. As I understand the course of business in the clearing-house, at half past eight in the morning, the Keystone bank sent to the clearing-house, checks deposited in it which were drawn on banks members of the clearing-house?

A. That is right.

Q. And these checks were made up in packages of envelopes, each envelope containing the checks drawn on a particular bank?

A. They were.

27 Q. Did they hand to the manager a list of those packages?

A. They did not.

Q. Suppose that the aggregate of the checks in the Keystone bank packages was $100,000, and the aggregate of the checks drawn on it and brought in by the other banks was $90,000; how did the Keystone bank get payment of the $10,000 difference?

A. They received payment for $10,000 from the manager at 12 o'clock that day, the balance of the creditor bank.

Q. From whom did the manager get the money to pay the Keystone bank at 12 o'clock in the case supposed?

A. From the debtor banks.

Q. Suppose, on the contrary, that the checks in the packages presented by the Keystone bank in the case supposed amounted only to $90,000, and the checks drawn on it and presented amounted to $100,000; did the Keystone bank pay the difference of $10,000 in one sum directly to the manager of the exchange?

A. They did.

Q. The payments made to the manager of the clearing-house are deposited in the Philadelphia National bank to his credit in the same way as the due bills you have already mentioned as being given at the noon settlement; are they not?

A. Excuse me, they are not.

Q. How are they paid?

A. Do you want me to keep on this supposition of $10,000?

Q. Yes, sir.

28 A. That amount of $10,000 would be paid either in gold, certificates or legal-tender notes.

Q. What do you mean by certificates?

A. Certificates issued by the Clearing House Association representing gold deposited with the depositary, Farmers' and Mechanics' bank, or certificates for legal-tender notes issued by the United States assistant treasurer for notes deposited in the United States Treasury.

Q. Then the Keystone National bank, in the case supposed, would not hand you any money?

A. No, sir.

Q. And you would only accept one or the other of the two things you have named?

A. Yes, sir. Strictly speaking, there is a third class of certificates. There are really three classes of certificates they pay; but the debt is paid in certificates, not actual cash.

Q. What is the third class?

A. United States gold coin deposited in the United States Treasury, issued by the assistant treasurer.

Q. Are you or not familiar with the resolutions of the Clearing House committee of September 24, 1873, as amended October 18, 1873, relating to clearing-house certificates?

A. I was not in the clearing-house in 1873; but I am familiar with the workings there.

Q. You are familiar with the resolutions, I asked?

A. Yes, sir.

Q. On March 20, 1890, there was a fourth class of certificates receivable by you in settlement of the balances; was there not?

A. Yes, sir.

29 Q. What was that fourth class?

A. Clearing-house loan certificates.

Q. In the settlement made at noon for the exchanges brought in at 8.30 a. m., there was also included the due bill given by the bank in settlement at the runners' exchange of the previous day? Was there not?

A. Yes, sir.

Q. On the settlement made at noon, that is to say, the runners' exchange of March 19, 1891, was the Keystone National bank a debtor or not?

A. They were a debtor.

Q. Have you any book or memorandum here to show for what amount they were a debtor?

A. Yes, sir.

Q. Please turn to that and state the amount?

A. $23,031.44.

Q. Does your memorandum show to what particular banks, or in what particular proportions, that $23,031.44 was due?

A. No, sir.

Q. Did you or not as manager receive from the Keystone National bank a due bill for that sum?

A. I did; yes, sir.

Q. And you held that on the 20th of March, 1891, or had you deposited it?

A. That was deposited.

Q. And when had you deposited it?

A. On the 19th of March.

Q. In the Philadelphia National bank?

A. In the Philadelphia National bank.

Q. And to your credit as manager?

30 A. Yes, sir.

Q. At the settlement at 8.30 a. m. on March 20, 1891, in what sum was the Keystone National bank a creditor in the clearing-house—I do not mean what net balance, but what sum was in its favor?

A. $70,005.46.

Q. Can you tell me on what banks the checks or drafts composing that $70,005.46 were drawn, and how much on each?

A. Our records will not show it.

Q. In what amount was the Keystone National bank a debtor at the clearing at 8.30 a. m. on March 20, 1891?

A. $117,035.21.

Q. What banks held the checks and drafts which composed that $117,035.21, and in what proportion were they held by each?

A. Our records do not show that either.

Q. What was done with the checks and drafts composing the $70,005.46 sent to the clearing-house by the Keystone National bank?

A. When they were brought to the clearing-house that morning, they were distributed on the respective desks by the package clerk of the Keystone bank and receipted for by the settling clerks of the several respective banks, and taken by their package clerks to their respective banks.

Q. What was done with the packages of checks making the $117,035.21 drawn on the Keystone National bank and brought to the clearing-house on March 20, 1891?

A. They were left by the package clerk of the Keystone bank in a satchel in the custody of the manager.

Q. That is, yourself?

31 A. Yes, sir.

Q. For what purpose, or on what terms, were they so left?

A. They were left until the balance should be paid—until the balance arising from that exchange should be paid.

Q. And that balance was, how much?

A. That balance would be $47,029.75.

Q. And that sum of $47,029.75 was probably payable at 11.30 that day in certificates, as you have mentioned?

A. At 12 o'clock that day.

Q. In certificates, as you have mentioned?

A. Yes, sir.

Q. And that was based on a supposition that the due bill for $23,031.44, given by it to you and deposited on the day before, had been paid in due course?

A. That due bill was supposed to be in one of those packages; it was understood that that due bill was in the package; it was included in that.

Q. Part of the $117,035.21?

A. Yes, sir.

Q. That is to say, then, you supposed that the due bill had been sent in by the Philadelphia National bank the same as any other check on the Keystone?

A. Yes, sir; exactly.

Q. Had it, in fact, been so sent in; do you know?

A. These are sealed packages; I am not supposed to have any knowledge of the contents.

Q. But I ask whether in this particular case you know whether that due bill had been sent in in that morning exchange?

A. Well, it had.

32 Q. Ordinarily between banks, is it the usual course for the debtor banks to leave its packages until it took them up, or was it the usual course to give it credit from 8.30 until 12 o'clock.

A. It is the usual course to give it credit.

Q. Why was a different course pursued in respect to the Keystone National bank by the clearing-house?

A. That was the result of an agreement between the Clearing House committee and the Keystone bank.

Q. It was; but why was there any such agreement made? Why was there any difference made?

A. I would only be answering hearsay testimony; I cannot say, because that was a matter between the Keystone bank and the Clearing House committee.

Q. Were there any other banks that were refused credit by the clearing-house at that time except the Keystone bank?

A. No, sir.

Q. For how long had it been refused credit by the clearing-house?

A. I cannot give the exact date, but I think for about two months.

Q. Had the Keystone bank at any time given security to pay its daily balance?

A. They had, when they became a member of the association.

Q. Do all banks do it?

A. They do.

Q. What was the security given by the Keystone bank to secure its daily balances?

33 A. The time they were admitted to the clearing-house, $50,000.00.

Q. Was it changed afterwards?

A. It was changed. The capital of the bank was increased, which

required a deposit of additional security; the exact date I do not know.

Q. Is there any uniform rule pursued by the clearing-house as to the amount of security required from its members for its daily balances?

A. There is; yes, sir.

Q. What is the rule?

A. By the constitution of the Clearing House Association, article 17, defines the amounts to be deposited, which are regulated by the capital of the bank.

Q. Did the Keystone National bank at any time give any other security than that?

A. They did.

Q. I refer now to "security as collateral for their daily settlements," as provided in article 17 of the constitution to which you have referred.

A. Yes, sir.

Q. Had they?

A. They had.

Q. How much had they so given?

A. I cannot give the exact amount, because the committee have the authority vested in them to call additional collateral from banks as they think proper; and that has been done in a number of instances, not only with this bank but with others; and so additional collateral was called from time to time, just what amounts or dates I could not tell without referring to the books.

34 Q. Who does know the dates and amounts of the additional collateral security called for from the Keystone bank to secure their daily settlements?

A. Why, it would be in my power to find that out; it would require some research.

Q. Have you no book or paper here which would show it?

A. I could not tell. I have my books here, but I cannot tell by merely looking at the books, until I hunt up the resolution calling for the deposit of the collateral, and then I could hunt through the books and find it. I would have to get the resolution of the committee instructing the manager to call it.

Q. Subject to correction hereafter upon such examination, please state your best recollection as to the amount of security which had been given by the Keystone bank on or prior to March 20, 1891, to the Clearing House Association to secure its daily settlements?

A. I would not feel safe in making any statement without search through the books, because I am very uncertain as to the dates and amounts. I can work that out afterwards, but it is a difficult thing to find it. My previous answers have all related to the eleven years during which the Keystone bank was in the association. Collateral was called, but I cannot just give the date of it.

Q. On March 20, 1891, when the bank failed, how much collateral security had been received by the Clearing House Association from the Keystone National bank to secure its daily settlements?

A. I can answer that very easily; there was nothing on the books.

35 Q. What do you mean by that?

A. It had been transferred from that account.

Q. Transferred from what account?

A. From the daily balance account.

Q. To what other account?

A. To loan certificates.

Q. Had all the collateral which had heretofore been deposited by the Keystone bank been transferred to the loan-certificate account?

A. It had.

Q. When was such transfer made?

A. On the 30th day of December, 1890.

Q. In what connection was it made?

A. Owing to an agreement made between the Keystone bank and the Clearing House committee.

Q. Was that agreement a special one, applicable to the Keystone National bank, or was that the course generally pursued in respect to all the banks?

A. Applicable to the Keystone bank.

Q. What agreement was there between the Clearing House committee and the Keystone bank to your knowledge—I do not mean by your information, but whether you were present, or whether it was in writing, or you saw it, or what?

A. To my knowledge, the collaterals were to be taken from the daily balance account and credited on the loan-certificate account. And for the debt in the morning, the check packages were to be held until the balances were paid to the clearing-house.

Q. You say that was to your knowledge?

A. Yes, sir.

36 Q. Who made the agreement on behalf of the clearing-house?

A. That I cannot say; I was not present.

Q. Who would have power to make it on behalf of the clearing-house?

A. The Clearing House committee in session.

Q. Of how many is that composed?

A. The seven gentlemen that you have named there in the bill.

Q. If you were not present when the agreement was made, what is your means of knowledge of the agreement?

A. Instructions I received from the committee what to do.

Q. From what member of the committee did you receive the instructions alluded to?

A. The chairman of the committee.

Q. And who was he?

A. Mr. D. B. Comegys.

Q. Then your only means of knowledge of the making of this agreement is from what Mr. Comegys told you?

A. Instructions received from the committee.

Q. By the committee you mean from Mr. Comegys, chairman of the committee, on behalf of the committee?

A. I mean I was called into the room, instructions were given me in the presence of the committee. They were sitting around the table, and I was instructed.

Q. All the instructions were given to you by Mr. Comegys?

A. Yes, sir.

Q. Was any minute of that made upon your books?

37 A. Not to my knowledge; I think not. I can answer that positively; there was not.

Q. Such regulations are usually entered on the minutes of the committee, are they not?

A. No, sir.

Q. Was there any agreement in writing in relation to what should be done with the collaterals deposited by the Keystone bank, to your knowledge?

A. No, sir.

Q. Was there any receipt given by the Clearing House committee?

A. There was.

Q. Have you that?

A. I have a copy of the receipt.

Q. Have you got the receipt itself?

A. That is in the hands of the receiver, I think. It was delivered by the committee to the Keystone bank. I have a copy of it.

Q. Please let me see your copy?

A. (Witness produces copy of receipt.)

Q. Have you any account which shows the different collaterals deposited at different times by the Keystone bank with the Clearing House committee, to secure its daily settlements, or as security for loan certificates from, say, June, 1890, to March 20, 1891?

A. I have; yes, sir.

Q. Where is that book?

A. I have it in these books. (Witness produces book.) The date of the transfer of the daily settlement collaterals to the loan-

38 certificate account was on December 30, 1890, and so appears by the receipt of J. G. Divine on behalf of the Keystone National bank.

Q. What is this book that you have just presented?

A. Record of collaterals on loan certificates; it is endorsed "clearing-house loan certificates;" it is a record of the security deposited for loan certificates.

Q. Was this book in use in 1873 during the panic of that time?

A. It was.

Q. And after the loan certificates issued in 1873 were settled up, was it again in use until those of 1890 were issued?

A. It was put in use again in 1890.

Q. Ran 17 years without any entries being made in it?

A. Yes, sir.

Q. Now, I understand you to say that the course that was pursued with the Keystone National bank was pursued with that case only,

and was not the one generally pursued with any of the other banks?

A. Yes, sir.

Q. And I understand you to say that you were not informed of the reason of pursuing this particular course in the case of the Keystone bank?

A. I said I was not present when the agreement was made.

Q. I ask you the purpose of it, or reason for adopting the particular course with respect to the Keystone National bank. Do you or do you not know?

A. I only know from hearsay.

Q. And from whom did you hear it?

A. From the Clearing House committee.

39 Q. And what was the reason given by the Clearing House committee?

A. Because they deemed it necessary.

Q. Did they say anything further than that?

A. I cannot remember the expressions of opinion that were made at that time.

Q. Do you recollect the tenor and effect? Was it not to the effect that the Keystone bank was shaky or was in danger, or equivalent expressions?

A. I had my own opinion.

(Objected to by Mr. Freedley.)

Then I must say, I do not know.

Q. What member of the Clearing House committee spoke to you about it?

A. I received my instructions, as I said before, from the chairman of the Clearing House committee.

Q. And the chairman during the time of this trouble with the Keystone National bank was Mr. Comegys; was it?

A. It was.

Q. These collateral, according to this book, appear to have been deposited sometimes every day, and sometimes several times on the same day?

A. Several packages on the same day; it was one deposit, but it was in different packages.

Q. What packages? What do these figures represent where there is more than one entry on the same day?

A. It represents packages containing bills receivable and promissory notes falling due at different periods; that is the reason they were put in several packages, according to their maturity; that was the object of it.

40 Q. Now, were the checks and drafts that were deposited in the sealed envelopes at the daily clearance put in this account?

A. No, sir.

Q. Why not?

A. Nothing was entered in that book but what was held by the committee as security for the issue of loan certificates.

Q. And everything that was held as collateral for loan certificates was put into this account; was it?

A. Yes, sir.

Q. By this account nothing seems to have been received by the clearing-house from the Keystone National bank as collateral for clearing-house certificates after March 13, 1891?

A. No, sir; that is the fact.

Q. Have you any paper or book to show what particular notes, drafts, or other securities, composed the collaterals, the par value of which was $575,383.79, deposited on March 13, 1891?

A. I have not at that date.

Q. Have you at any other date?

A. After the failure of the bank, why, we then made a schedule of the promissory notes that we held, and we have it from the date of the failure to the present time.

Q. Have you got that schedule?

A. No, sir; I have not got it here; it is at the clearing-house.

Q. In what was the schedule kept?

A. In what is called a tickler, a record of maturity of paper day by day as it fell due.

41 Q. That account would show exactly what items went to make up those $575,383.79, and when it matured, and what has been collected on account of it; does it not?

A. Yes, sir.

Q. What was the amount of the loan certificates which had theretofore been issued by the Clearing House committee to the Keystone National bank, and were outstanding on the 20th of March, 1891?

A. $335,000 exactly.

Q. I will have to ask you for a list of those, if you have not got it; will you make out one for me?

A. Yes, sir.

Q. You have stated that the runner of the Keystone bank left with you packages purporting to contain checks and drafts on the other members of the clearing-house to the amount of $70,005.46?

A. No, sir; that was not left with me.

Q. With whom was it left?

A. It was left on the desks of the respective banks to whom the packages belonged on whom the checks were drawn.

Q. What became of that sum of $70,005.46 represented by those checks?

A. It was taken to the respective banks by their runners.

Q. Then, were they collected; what was done with the amount?

A. It was charged up, I suppose, against the depositors' accounts. You see, we are getting outside of the clearing-house now.

Q. What was done with the packages containing the $117,035.21 that were left with you?

42 A. The banks redeemed those packages by giving cash to the clearing-house for them.

Q. What cash return did they give?

A. Clearing-house due bills or cash to the amount of the package.

Q. And to whom did they give it?

A. They gave it to me as manager.

Q. Then you received from the banks of members of the clearing-house this sum of $117,035.21?

A. Yes, sir.

Q. And which were the amounts of checks held by them which had been drawn on the Keystone bank?

A. They were checks that had been brought to the exchange by those several banks against the Keystone.

Q. Now, what did you do with the $117,035.21?

A. Proceeded to make the settlement of the day, made up the balance. Do you want it itemized?

Q. Yes.

A. Redeemed the runners' exchange due bill that the Keystone bank had given on the 19th instant, and also their clearing-house due bill on the morning exchange on the 19th instant.

Q. Held by what bank?

A. By the Philadelphia bank, deposited in my depositary. I will explain that amounts of balances under $5,000 are settled with due bill. Then we redeemed $17,000 in clearing-house due bills held by the respective banks against the Keystone bank, and the balance we applied to cancelling loan certificates.

Q. Have you got a statement of how the account was made up?

43 A. Yes, sir. (Witness produces statement.) The following is the statement:

"EXHIBIT A."

Amount of debtor balance of the Keystone National bank, March 19th, 1891, at runners' exchange.....		$23,031 44
Amount of debtor balance at A. M. exchange, March 19th, 1891.....		359 08
Due bill in A. M. exchange against Keystone National bank, March 20th, 1891, and taken from their total credit:		
Corn Exchange.....	$5,000 00	
Third National.....	1,812 90	
Philadelphia.....	800 00	
Independence.....	3,000 00	
Independence.....	6,000 00	
Girard.....	1,193 94	
		17,896 84
		$41,197 36
Amount applied to cancellation of loan certificate.....		28,808 10
		$70,005 46

Q. Those $70,005.46 that was received by the clearing-house, or

by you, as manager of the clearing-house, was received from whom?

A. We received $117,035.21 from the banks. The $70,005.46, as I stated before, was taken to the banks. I had nothing whatever to do with that.

Q. But the amount that you got and paid out was $70,005.46?

A. Yes, sir.

44 Q. That was the net result of it?

A. Yes, sir.

Q. In other words the banks that had the checks that were drawn on the Keystone bank, and had been left in your custody, owed you nothing when they took them away; did they?

A. The banks owed us nothing when they took those checks away; no, sir.

Q. They did not, therefore, have to pay you the amount of the checks which they had, which had been dishonored; did they?

A. The banks were obliged to make up that amount to the clearing-house, to make up the $117,035.21.

Q. So as to make the clearances correct?

A. Yes, sir.

Q. As a matter of book-keeping, they were obliged to make that up?

A. In order that the manager could make that settlement.

Q. Then a bank that had checks for $10,000 drawn on the Keystone bank, and also on which the Keystone bank had checks amounting to $5,000 received and took away the checks drawn on it for $5,000.

A. No, sir; I only handle the amounts received, I made no settlement of the balances arising between the amount that the banks had against the Keystone and from the Keystone. I did not settle or arrange that difference at the clearing-house.

Q. You made no settlement of that account?

A. No, sir.

45 Q. And, therefore, it was necessary to treat those checks for $117,035.21 as good to enable you to make the settlements at all; was it not?

A. Yes, sir.

Q. And the fact of making the settlement in that form was to get the benefit of the $70,005.46, was it not?

A. The benefit was gotten, there is no doubt of that.

Q. These due bills amounting to $17,806.84, held by the Corn Exchange and other national banks, was that paid to the clearing-house or by the clearing-house to those banks?

A. The respective amounts were paid to those banks by the clearing-house out of this portion, this $117,035.21.

Q. Well, or out of this $70,005.46, whatever you choose to call it—this balance?

A. I call it the $117,035.21; that is what I received.

Q. Now, this $70,005.46 was actually received by the Clearing House Association; was it not?

A. I only on that day exchanged the packages, gave packages to

the amount of $117,035.21 for cash from the banks; as manager; that is what I did; as manager I received that.

Q. I understand that; I am not asking you as to that day or when it was; I ask you whether or not the transactions set forth in this account was a matter of pen and ink and paper, or was an actual fact?

A. It was an actual fact.

Q. Did not the banks, on which checks amounting to $70,005.46, held by the Keystone bank, pay to the clearing-house that sum of $70,005.46?

A. It did not appear as that sum; if it was paid in it was not paid as $70,005.46.

46 Q. I understand the distinction that you make between the account, as you state it; but it does not answer the question. As a matter of fact, did not the banks on which the checks, amounting to $70,005.46, were drawn, and which said checks had been brought in by the Keystone bank at the morning clearance of March 20, 1891, furnish the money to the clearing-house, from which it paid the items set forth in this account, amounting to $70,005.46; and if not where did it come from?

A. This amount was paid in to the manager by every bank that had received a package from the Keystone bank. I will give you a case to explain this. The Keystone bank had a package against the Southwark bank on that morning for $590.52. The settling clerk of the Southwark bank receipted for that amount to the Keystone bank. The package clerk of the Southwark bank carried that package to the Southwark bank. Now when it came to the manager's calling on the banks to make up this $117,035.21 for their packages which they had against the Keystone bank, the Southwark bank, on that day, did not have anything against the Keystone. According to that statement the Southwark bank made no payment at all. Therefore, the banks did not pay me $70,005.46 that had been carried away to the credit of the Keystone bank that morning. This is a case that I wanted to give as an illustration. It sometimes happens that banks have not packages for other banks. A bank may only come to the exchange with twenty or twenty-five packages, and there are thirty-eight banks.

Q. What did the Southwark bank do with that $590.52?

A. I do not know; I suppose it charged it up against the account of the party.

47 Q. Did it pay anything to anybody for it?

A. It receipted to the Keystone bank for it and it appeared in their credit that day.

Q. The Keystone bank was entitled to credit from the Southwark bank?

A. No; they did not have any credit from the Southwark bank. The Southwark bank settled that day $13,000 credit, that we paid them.

Q. The Southwark bank paid in to the clearing-house $13,000?

A. No, sir; the opposite; the manager paid them $13,000.

Q. And in making up that amount that the clearing-house owed

the Southwark bank, the $13,000, the $590.52 that the Southwark bank owed the Keystone bank was taken into account, was it not?

A. It was.

Q. And, therefore, that $590.52 was collected in the same way as were the balances due any other debtor bank?

A. You asked me first, the way you put it to me, that the banks that received those checks from the Keystone we had given credit to, made up this indebtedness. I replied in stating that the case showed that they had not, so it does not follow that every bank was called on to make up the amount that they had given the Keystone credit for.

Q. That is your argument, I am now trying to get at the facts.

A. The facts are before us on paper there.

Q. Suppose the Keystone bank had not failed, then the Southwark bank would have paid the Keystone bank nothing directly as the result of the clearances of March 20, would it?

48 A. No, sir.

Q. But the Keystone bank would have collected its $590.20 through the clearing-house?

A. Yes, sir.

Q. Now, wherein did the result that was reached differ by treating the matter as you did—to wit, taking these dishonored checks and treating them as drawn on you, instead of as drawn on the Keystone bank?

A. I did not consider those checks our property; they were the property of the banks that redeemed them.

Q. I know you did not treat them as your property; but you treated them as though they had been drawn on you and put them through the clearance, as though the Keystone bank was able to pay them, did you not?

A. We were obliged to make up the balance to the Keystone bank on that day, $47,000, in order to make my settlement, and that is the way we did it.

Q. You adopted this way so as to make good the balance due you?

A. The balance due the banks. Well, the balance due the clearing-house.

Q. Were the items in the account that you have presented of due bills in the A. M. exchange against the Keystone National bank, March 20, 1891, and taken from their total credit—Corn Exchange, $5,000; Third National, $1,812.90; Philadelphia, $800.00, etc., amounting to $17,806.84—paid by the clearing-house to those banks?

A. They were.

Q. And the clearing-house got the money to pay those items by making the settlement which you have mentioned?

A. Yes, sir.

49 Q. I understand you to say that the runner of the Keystone bank left those checks drawn on it, amounting to $117,035.21, in your custody at half past eight on the morning of March 20?

A. Yes, sir.

Q. Do you recollect his name?

A. No; I do not at this moment.

Q. When he left them with you, the intention and expectation was that he would bring you the $47,000, at noon in certificates, according to your rules?

A. That amount would be paid by the bank by 12 o'clock.

Q. And in that event you would have given him the $117,035.21 of checks?

A. Yes, sir.

Q. Why did you not give him that $117,035.21 of checks?

A. Before the balance was sent down, and while it was being made up, the bank examiner closed the bank.

Q. When did you first hear of it?

A. Somewhere about ten or half past ten o'clock that morning, on Friday the 20th of March, 1891.

Q. After your knowledge of the failure, did you consult with any one as to what you would do with the packages containing the checks amounting to $117,035.21?

A. The Clearing House committee were called together and I received my instructions from them.

Q. About what time of the day?

A. About somewhere around half past ten, I suppose, as soon as I received the news, I notified the committee.

50 Q. You notified them that the Keystone bank had closed its doors?

A. That the Keystone bank had closed its doors.

Q. And then the committee met?

A. And then the committee met.

Q. And then they gave you their instructions?

A. Exactly.

Q. Right off, as quick as it could be done?

A. Yes, sir; there was a great deal to be done just at that time.

Q. Where did the committee meet?

A. In the Farmers' and Mechanics' bank; second floor.

Q. Where is your place?

A. Same place; second and third story.

Q. That is where you actually made these exchanges?

A. On the third floor.

Q. And who was the committee that met that day?

A. The several gentlemen mentioned there in the bill.

Q. Not all of them; they were not all there?

A. To the best of my knowledge, they all got in before the meeting was over; that is, before 12 o'clock.

Q. From what member of the committee did you receive these instructions?

A. I received them in a general way that morning; I was in and out of the room all the time; the gentlemen were seated around the table; it was "Mr. Boyd, this" and "Mr. Boyd, that;" I was there to carry out the instructions I received without stopping to make record of who told me to do this or that.

Q. The only thing that required any special action was the matter of the Keystone bank; was it not?

51 A. I think it was at that time.

Q. What instructions did they give you?

A. They gave me instructions that I carried out on that paper.

Q. State as near as you can how they gave you instructions—they did not give it to you in book-keeper's language. How did they give you the instructions?

A. They were aware that they had the exchanges there of the Keystone bank, that we held the exchanges of the Keystone bank in custody in sealed packages; and the orders were to call on the banks to make those packages good by sending the money to the clearing-house; and then the money was received later in the day, and the distribution was made as stated there, or the settlement was made.

Q. Did you actually call on the banks, or did you put these through the clearance without calling on the banks?

A. No, sir; notified the banks immediately?

Q. Then they sent you the money for the checks which had been dishonored?

A. Yes, sir.

Q. The balance sheet for the clearance was made up already on the twentieth of March, and, in accordance with the usual custom, upon the basis that the checks drawn on the Keystone National bank were good, was it not?

A. Yes, sir.

Q. Then to complete the clearances and protect the $47,000, you called on the banks putting up these checks for the cash, as though said checks had been dishonored, did you not?

A. We called upon them to redeem the amount which they

52 had been credited with in the settlement for accounts of checks drawn on the Keystone bank. We called the amount sent to the Keystone bank—we say, redeem the packages sent to the Keystone bank.

Q. And which they had been credited with in the balance-sheet; had they not?

A. They had.

Adjourned.

WEDNESDAY, *November* 30, 1892—2.30 p. m.

Present: Silas M. Pettit, Esq., for plaintiffs; A. T. Freedley, Esq., for defendants.

In answer to a call made by the plaintiff's counsel since the last meeting, Mr. Freedley produces and hands to the plaintiff's counsel a copy of the record of the clearing-house of the 8 a. m. settlement on March 19, 1891.

Also a similar copy of the record of the runners' exchange settlement on March 19, 1891.

And also a copy of the record of the clearing-house of the morning settlement on March 20, 1891.

Mr. Pettit offered in evidence the papers just produced on call, to wit:

Copy of manager's settlement, Philadelphia clearing-house, March 19, 1891, marked "Exhibit No. 1."

53 Copy of the manager's settlement of the runners' exchange for Thursday, March 19, 1891, marked "Exhibit No. 2."

Copy, manager's settlement, Philadelphia clearing-house, Friday, March 20, 1891, marked "Exhibit No. 3."

Examination of JOHN C. BOYD continued.

By Mr. PETTIT:

Q. Exhibits Nos. 1 and 3 are of the morning clearances and No. 2 is of the runners' midday clearance, is it not?

A. Yes, sir. The noon exchange we call it, midday.

Q. On the settlement of the morning exchange on March 19th the Keystone National bank appears to have been debtor to the clearing-house in the sum of $75,359.08?

A. Yes, sir.

Q. Was that debtor balance paid by it on the 19th of March?

A. It was. I will explain. All amounts under $5,000 are paid in clearing-house due bills. In this case, a clearing-house due bill of the Keystone bank was given to me as manager for $359.08, which I deposited in my depositary bank, the Philadelphia bank.

Q. What do you mean by clearing-house due bill?

A. A clearing-house due bill is a due bill given by a bank for checks. The due bill in this case was exactly the same as any other bank due bill. It is what is known as a clearing-

54 house due bill. It is the same as used by banks in dealing between themselves. It is to avoid giving cash. It is the same due bill as is used by the banks dealing between themselves.

Q. Then it was that due bill which was included in your statement of the amount which you settled against the Keystone bank already in evidence?

A. Yes, sir. It appears as one of the items there.

Q. I understand by manager's settlement, Exhibit No. 2, that at the runners' exchange the Keystone bank presented checks held by it and drawn on other banks in the clearing-house amounting to $7,024.18, and that the other banks, members of the clearing-house, had checks drawn on the Keystone bank amounting to $30,055.62, and that the balance of $23,031.44 was paid by it in a due bill given to the manager and which was deducted in the settlement as per statement already rendered?

A. That is correct.

Q. Manager's settlement of March 20, 1891, Exhibit No. 3, shows, as I understand it, that the Keystone bank held checks drawn on other banks amounting to $70,005.46, that other banks in the clearing-house had checks drawn on it of $117,035.21, and that it was because said Keystone bank did not pay the balance of $47,029.75, but had closed its doors, that the statement of settlement of March 20, 1891, already given in evidence, was made?

A. Yes, sir; that is correct.

Mr. Pettit offered in evidence copy of the receipt given to the Keystone bank for bills and notes receivable amounting to $575,383.79 hypothecated with the clearing-house, March 13, 1891, marked "Exhibit No. 4."

55 Q. I understand you to say that it was on December 30, 1890, that the clearing-house transferred the securities which it held to secure the daily balances of the Keystone National bank with it to the loan-certificate account?

A. It was on that day.

Q. How much was the security held by the clearing-house for the daily balances that was so transferred?

A. $277,947.43.

Q. Of what did that consist?

A. Bills receivable.

Q. Were there any Baltimore Traction Railroad Company's bonds in that as collateral?

A. No, sir.

Q. Did the clearing-house at any time hold Baltimore Traction bonds as security from the Keystone bank?

A. For what purpose?

Q. Did they hold them for any purpose?

A. They held them as security.

Q. For what?

A. For loan certificates.

Q. When did they get them?

A. December 2, 1890.

Q. When they received them did they receive them as collateral for loan certificates?

A. They did.

Q. Did they ever change the method of holding them?

A. No, sir.

Q. What became of them?

A. After the bank had failed they were sold and the proceeds were applied to cancelling loan certificates.

56 Q. All other banks in the clearing-house had in the month of December, 1890, and until March, 1891, clearing-house loan certificates, had they not?

A. Do you mean they had taken them out?

Q. Yes.

A. I think there were two exceptions. I cannot state them just now.

Q. All but two banks then took them out, did they?

A. Yes, sir.

Q. I understand that these banks all gave security for their clearing-house loan certificates?

A. Yes, sir; they all gave security.

Q. And they all gave security for their daily balances in accordance with the by-laws of the clearing-house?

A. Yes, sir.

Q. But the Keystone bank was the only one in which these two accounts were merged?

A. It was.

Q. These balances shown due the creditor banks in the manager's settlement of the clearing-house and for the runners' exchange are paid by the manager's checks, as I understand it?

A. Paid by certificates and checks for amounts under $5,000.

Q. Paid by what kind of certificates?

A. What is known as clearing-house gold certificates, United States Treasury gold certificates, and United States Treasury legal-tender certificates. Those are the three classes.

Q. They are paid by the manager in the same sort of certificates as the debtor banks pay him in?

A. Exactly.

57 Q. In point of fact at what hour of the day does he pay the creditor banks the amount shown due them in the morning settlement?

A. At twelve o'clock.

Q. In point of fact, at what time does he pay the creditor banks the amount due them as shown by the settlement at the runners' exchange?

A. That is when the settlement is made. That varies. Say twelve o'clock.

Q. It is made as soon as the settlement is made?

A. Yes, sir.

Q. While in the morning exchange it is not made for an hour or two afterwards?

A. Yes, sir.

Q. And the manager's checks so paid are put by the receiving bank in the clearing-house the next day just as due bills or clearing-house certificates received from any other bank in the ordinary course of business?

A. Yes, sir.

Q. Referring to the statement of the settlement of March 21, 1891, please state why the two due bills of $23,031.44 and of $359.08 respectively were selected for payment?

A. Because the constitution provides for a case of this kind.

Q. Where?

A. This due bill was presented by the Philadelphia bank and it was paid. Article 11 of the constitution makes a provision, "That the amount of the due bill given by the defaulting bank in

58 settlement of its debit balance on the runners' exchange of the previous day and deposited by the clearing-house in its depositary bank, shall be deducted from the total charge of such bank and shall be the first claim against the securities deposited by the defaulting bank under article 17."

Q. What article do you refer to?

A. Article 11 of the constitution of the Clearing House Association.

Q. Was the settlement of March 20, 1891, made in strict accord-

ance with article II of the constitution of the clearing-house and of the proviso thereto?

A. It was not made in accordance with this article.

Q. Why not?

A. As has been already stated in my testimony, the banks brought me $117,000 for checks that they held against the Keystone bank, and that $117,000 was applied as the statement shows.

Q. And because of that arrangement that you so made, it was unnecessary for you to call on the banks to pay to the clearing-house their respective balances against the Keystone bank, was it not?

A. It was unnecessary.

Q. Referring to six several due bills amounting to $17,806.84, included and paid by the settlement of March 20, 1891, already in evidence, please state why those six due bills in particular were selected?

A. They were the only ones that the banks held against the Keystone. They were all. We did not make any exception. They were the entire amount of due bills that were in the exchange against the Keystone bank the morning the bank failed.

59 Q. You do not mean to say that they were all the due bills issued by the Keystone bank that were then outstanding, do you?

A. No, sir; I do not mean that. I mean to say that they were all that were in the clearing-house, that went through the clearing-house at that exchange.

Q. By exchange you mean the clearing-house in this case?

A. The clearing-house.

Q. Why were they given preference over any other form of check or obligation?

A. The checks had been surrendered to the Keystone bank and these obligations had been given by the Keystone bank to the banks holding these due bills.

Q. The due bills were obligations due to the banks, were they not?

A. Yes, sir.

Q. But the checks presented by the banks having been returned to the banks could be charged back by them against their customers, could they not?

A. They could.

Q. Was that the reason of the distinction?

A. As these could not be charged back, we did this to protect the banks. This was done to protect the banks that held them.

Q. This was done for the purpose of protecting the banks that held them.

A. Yes, sir.

Q. Then the balance of $28,810 was applied to the payment of the amount due the clearing-house for these loan certificates?

A. Yes, sir.

60 Cross-examination.

By Mr. FREEDLEY:

Q. What is the Clearing House Association or Company?

(Objected to as the constitution and by-laws of the association are the best evidence of what it is.)

A. The Clearing House Association is a voluntary association of all the national banks in Philadelphia.

Q. Is it incorporated?

A. It is not.

Q. What is the general object of such association?

A. The object of such association is to effect at one place the proper exchanges between banks.

Q. Where there are no clearing-house associations what is the method of effecting such exchanges?

A. Where there is no clearing-house it necessitates the collection by a runner of the checks held on all banks in a city at the banks proper. In our city it would require a runner to collect checks on thirty-seven other banks than his own each day.

Q. Then in the absence of some common place to meet, known as the association, I understand you that each one of the thirty-eight banks would have to send a runner to each one of the other thirty-seven banks and collect and exchange between them?

A. Yes, sir.

Q. Having a common meeting place to make the exchanges between the banks, what is the present course of the business of making exchanges?

61 A. At half past eight o'clock in the morning each bank sends two clerks, known as the settling and package clerk, to the clearing-house. The settling clerk takes his place inside of an oval form at a desk known as his own; the package clerk stands on the outside of the oval. At a signal given by the manager the package clerk passes to the desk, delivers a package to the settling clerk, receives a receipt for the same directly from that settling clerk, and then continues around the room delivering packages and taking receipts for the same from the different settling clerks, until he returns to his own desk, at which time he has delivered all his packages and has the receipts of the different settling clerks in the room.

Q. Whom has he delivered the packages to?

A. To the different banks represented by the settling clerks.

Q. And from whom has he received the receipts?

A. From the settling clerks of those banks.

Q. Has the Clearing House Association or the Clearing House committee or the manager anything to do with those exchanges?

A. They have not.

Q. Do they see the exchanges?

A. They do not.

Q. Do they handle them in any way?

A. They do not.

Q. In what form are the exchanges themselves physically made?

A. The exchanges are made in sealed packages with the gross amount on the outside.

Q. Are these packages opened by any one in the clearing-house?

62 A. They are not. Under no circumstances.

Q. What becomes of the package itself?

A. It is taken to the bank receipting for it and opened there.

Q. What becomes of the receipt that is given to the different bank clerks delivering packages?

A. It is also taken to the bank.

Q. Is the paper which I hand you a sample of one of the receipts which the different banks give to each other for those exchanges?

A. It is.

(Paper marked "A. T. F. No. 1.")

Q. Suppose that one of the banks sends its messenger to this room and the messenger arrives too late to effect its clearance with the other banks at the association rooms, how is the clearance with that bank then effected?

A. It is made exactly as if there was no clearing-house outside.

Q. How is that done?

A. He is obliged to go to the thirty-seven banks and present his checks and receive payment for them. The bank pays the messengers, or clerks, who bring the checks against them. It is paid at the teller's window.

Q. Does he settle with those thirty-seven banks individually by check or due bill?

A. Yes, sir; cash or due bill.

Q. Do you as manager get any record of that?

A. No, sir.

Q. Suppose one or more of these packages does not contain the gross total that is endorsed on the outside; how is that rectified?

63 A. That is rectified between the sending and receiving bank.

Q. And has the association or committee or yourself anything to do with it?

A. Nothing whatever.

Q. Would such loss be reported to the association?

A. No, sir.

Q. After those exchanges are thus made between the different banks, how is your record of them made up?

A. The settling clerk makes out what we call a debit and credit ticket, showing the amount he has brought to the clearing-house, the amount he has received at the clearing-house and the balance, whether he is a debtor or creditor bank. We make the record of that when it is handed to us.

Q. Is that the only connection which the association or the committee or yourself have with these exchanges?

A. That is all.

Q. (Paper marked "A. T. F. No. 2" handed witness.) State if that is the form of the debtor and creditor slip that is given to you from which you make your record?

A. Yes, sir.

Q. Then, as far as these exchanges go or are affected or these daily settlements made, have the association or the committee or yourself as manager, anything to do with them or any responsibility connected with them?

A. We have not. It is simply a convenience for banks meeting at one place and exchanging the checks and drafts held against each other.

Q. Have you in fact any rule as between the banks as to the responsibility of the manager or the association for anything connected with the association?

64 A. Yes, sir.

Q. Please refer to it?

A. (Referring to constitution.) Article II of the constitution reads:

"That the responsibility of the association for such exchanges is strictly limited to the faithful distribution by the manager among the creditor banks for the time being of the sums actually received by him."

Q. What practical difference would there be between holding a Clearing House Association as a body liable, say as in this case for packages received from the Keystone bank and holding liable the banks who actually received these packages, if any liability existed?

(Objected to.)

A. If the association was held liable then banks who did not have any checks or packages against the Keystone bank on the morning of the failure would be called on to make up the amount, which would be unjust.

Q. Could or could not the association itself correct this inequality?

A. They could not, because our records do not show which banks had the packages against the Keystone that day.

Q. The only record you receive, I understand you, is a record of totals and not particulars from the different banks who make the exchanges?

A. We keep the records of the totals only.

Q. And you receive the records of the totals only?

A. Yes, sir; we receive the totals only.

Q. You do not receive any particular items from any particular bank, do you?

65 A. We do not.

Q. Your association is governed by a constitution and rules and regulations, is it not?

A. Yes, sir.

Q. Have you a copy here?

A. Yes, sir.

(Witness produced copy of the constitution and rules and regulations of the Clearing House Association of the Banks of Philadelphia, marked "A. T. F., No. 3.")

Q. (Paper shown witness marked "A. T. F., No. 4.") What is that paper?

A. That is called the clerks' settling sheet, a. m. exchange settling sheet.

Q. Who receives that paper?

A. The bank. This sheet is taken from the clearing-house to the bank by the settling clerk.

Q. Is it given to you or to the association?

A. No, sir.

Q. Do I understand you that each bank has among its own papers a record of the settlements which it makes with other banks upon any particular settlement or exchange?

A. They have.

Q. And it is in the form that this paper, marked "A. T. F., No. 4," appears?

A. Yes, sir.

Q. Then condensedly do I understand you that these exchanges and settlements are made between the banks themselves, and that neither you nor the committee, nor the association, handle the packages or have anything to do with them or know anything about them except the record of totals which is subsequently communicated to you by the clerks of the different banks?

66

A. That is entirely correct.

Q. Is there any difference between the morning settlement known as the 8.30 settlement and exchange and the runners' exchange at 11.30?

A. There is not.

Q. Are they both conducted in this regard in the same manner?

A. They are.

Q. The bill in equity in this case states that the exchanges made by the Keystone bank with the other banks on the morning of March 20th contained items received by the Keystone bank on the morning of that day. Do you know whether, if that fact were so, it was in accordance with the rules adopted between the banks or not?

(Objected to, because the written rules and regulations have been offered in evidence.)

A. I do not know what the content of the packages were, but we have a specific rule that no matter received in the morning mail shall be put in the a. m. exchange.

Q. You were also asked whether the checks and drafts that were deposited in sealed envelopes at the daily clearances were put in the committee's account with the Keystone bank. Could the committee do such a thing as that?

A. We never got these checks and drafts. They were in sealed envelopes. We did not handle them.

Q. As a matter of fact, was ever any account of any kind kept by you or by the association of checks and drafts exchanged between the banks?

67 A. No, sir.

Q. When did the Keystone bank enter the Clearing House Association?

A. About June, 1880.

Q. Did it at the time it entered the association sign any agreements in reference to the rules and regulations of the association?

A. It did.

Q. Can you produce the agreements signed by the Keystone bank from time to time?

A. I can. I do produce them.

(Agreements produced.)

Q. What is that paper handed you?

A. (Reading:)

"JUNE 3, 1880.

"To the Clearing House committee of the Associated Banks of Philadelphia—C. H. Rodgers, chairman.

"DEAR SIR: I am requested by the board of directors of the Keystone National bank to make application through you, which I now do, to be received as a member of your association. We are prepared to comply with the terms of admission and adopt the rules of the association. Awaiting your reply, I am

"Yours truly, JOHN C. LUCAS, *President.*"

Q. Was this extract from the minutes of the Keystone National bank dated June 8, 1880, subsequently received by the Clearing House committee?

68 A. It was; extract is as follows:

"*Extract from the Minutes of the Directors of the Keystone National Bank, Adopted the Eighth Day of June*, 1880.

"Whereas, article XIX of the constitution of the Clearing House Association of Philadelphia requires as a condition of membership that each bank member of the Clearing House Association shall deposit with the Clearing House committee as collateral security for daily settlements a percentage or assessment on capital as therein set forth, and that the said deposit shall be held by the committee as security for the daily settlements, and should there be a surplus after the payment of balances in the daily settlements, said surplus shall be held by the committee as collateral security for any indebtedness to any of the members of the association. Therefore be it

"Resolved, That the cashier of this bank be, and he is hereby authorized to deposit with the Clearing House committee any of the

securities belonging to this bank that may be necessary to comply with the requirement of article XIX, aforesaid, and the same from time to time to exchange and substitute, it being hereby agreed that the said securities and all exchanges and substitutions thereof so deposited shall be held by the Clearing House committee as a general continuing collateral, and in case of any default on the part of this bank, the said committee is hereby authorized to sell, realize and collect any or all of the collaterals publicly or privately without notice to this bank, and to apply the proceeds, first, to the total or *pro rata* payment with interest of claims against this bank arising from reclamation or defalcation in the daily settlement agreeable to the provisions of article X of the said constitution; after payment in full of these claims with interest if any balance remains, or if no claims have arisen under article X, next to the payment in full with interest, or the *pro rata* payment of any indebted-
69 ness to any of the banks members of the association who may be creditors on the day on which said default may occur.

"Resolved, That a copy of this preamble and resolution signed by the president and attested by the cashier and the corporate seal of this bank be furnished to the chairman of the Clearing House committee.

"JOHN C. LUCAS, *President.*
"——— ———, *Cashier.*"

[Seal of the Keystone Bank.]

Q. Did the association subsequently receive this letter of March 7, 1891?

A. They did. The letter is as follows:

"PHILADELPHIA, *March* 7, 1881.

"At a meeting of the board of directors of this bank held January 21, 1881, the following resolution was unanimously agreed to:

"Resolved, That the articles of association of the Philadelphia clearing-house are hereby agreed to and approved by this bank.

"(Attest:) G. W. MARSH (*Cashier*)."

Q. Was this letter of January 21, 1881, also received from the Keystone bank?

A. It was. It reads as follows:

"George E. Arnold, Esq., manager Clearing House Association.

"DEAR SIR: At a meeting of the directors of this bank held to-
day the new Clearing House arrangement, dated November
70 22, 1880, was unanimously approved; also amendments to constitution in paper of December 8, 1880. Action would have been taken on these papers earlier but for my sickness and necessary absence from the bank.

"Yours truly, JOHN C. LUCAS, *President.*"

Q. Was the following agreement, dated June 2, 1882, received?

A. It was. It reads as follows:

"PHILADELPHIA, *June* 2, 1882.

"At the regular stated meeting of the directors of this bank held today the revised constitution, rules and regulations of the Philadelphia clearing-house, dated May 1, 1882, were unanimously approved.

"G. W. MARSH, *Cashier.*"

Seal of the bank attached.

Q. Was this letter of January 5, 1886, also received from the Keystone bank?

A. It was. It reads as follows:

"DEAR SIR: The resolutions prepared by the Clearing House Association sent to us for adoption were presented at the regular meeting of the board held December 11, 1885, and were unanimously approved.

"Very respectfully, G. W. MARSH, *Cashier.*

"To W. H. Rhawn, secretary C. H. Association."

Q. Prior to issuing any loan certificate to the Keystone National bank, was there any agreement and extract from their minutes exacted and received from them?

71 *Q.* There was. It reads as follows:

"At a meeting of the board of directors of this bank it was, on motion,

"Resolved, That the president of this bank be authorized and empowered to hypothecate any of the securities belonging to the bank to the Clearing House committee of the associated banks as security for any loan certificates that may be issued to this bank under the agreement entered into by the associated banks, September 24, 1873, as amended October 18, 1873. It is hereby further agreed that any of the securities that may remain after payment of certificates so issued shall, in case of any default on our part be held by the Clearing House committee as security for the transactions of this bank through the Clearing House Association of Philadelphia.

"G. W. MARSH, *President.*

"I certify the above is a true extract from the minutes of the board of directors of the Keystone National bank, held at Philadelphia, November 20, 1890. A quorum of the directors being present.

"JOHN HAYES, *Cashier.*"

[Seal of the Bank.]

Q. At a meeting of the association held on November 3d, 1890, an amendment to the constitution was passed, was it not, providing that the amount of the due bill given by the defaulting bank should be deducted from the total charge of the bank?

A. There was.

Q. Did the Keystone bank agree to that amendment?

A. They did. I have the agreement in my hand. It reads as follows:

72 "Clearing House Association of the Banks of Philadelphia.

"PHILADELPHIA, *December 1st*, 1890.

"At a stated meeting of the association held this day the following amendments to the constitution of the association proposed at the meeting November 3d, 1890, were unanimously adopted:

"Article XI was amended by adding thereto the following: 'Provided that the amount of the due bill given by the defaulting bank in settlement of its debit balance in the runners' exchange of the previous day and deposited by the clearing-house in its depositary bank shall be deducted from the total charge of such bank and shall be the first claim against the securities deposited by the defaulting bank under article XVII.'

"Article XVIII was amended by adding after the word 'association' in the first line the words 'and any amendments thereto.' These amendments are hereby presented to the several banks members of the association for adoption by their respective boards of directors, and due certification of the same under seal by their respective cashiers to the secretary of the association.

"Respectively, W. H. RHAWN, *Secretary.*

"To the secretary of the Clearing House Association of the Banks of Philadelphia:

"It is hereby certified that at a meeting of the board of directors of the Keystone National Bank of Philadelphia held this 23d day of December, 1890, the above two amendments to the constitution of the Clearing House Association of the Banks of Philadelphia were adopted by the board.

"JOHN HAYES, *Cashier.*

"Witness the seal of said bank."

[Seal of Bank.]

73 Q. Were the settlements of March 19, 1891, made in accordance with the course of business in practice which you have detailed?

A. They were.

Q. Were receipts given to and from the various clerks of the banks and taken by those clerks of the banks to their respective institutions?

A. They were.

(Mr. Freedley calls on the plaintiff to produce the receipts given on March 19 by the different banks to the Keystone National bank, being in the form marked "A. T. F., No. 1.")

Q. Was the 8.30 a. m. settlement of March 20 made in accordance with the practice which you have detailed?

A. It was.

(Mr. Freedley calls on the plaintiff to produce the receipts given by the various banks to the Keystone bank for packages which they

received from the Keystone bank on the morning of March 20, 1891, being in the form marked "A. T. F., No. 1.")

(Mr. Freedley also calls on the plaintiff to produce receipts given by the various banks to the Keystone bank for packages which they received from the Keystone bank in the runners' exchange on March 19, 1891.)

(Mr. Freedley calls on the plaintiff to produce the settling sheets received by the Keystone National bank on March 19, and March 20, 1891, being in the form marked "A. T. F., No. 4.")

74 Q. By your records thus made from the slips which were given to you after the exchanges were made by the other banks was the Keystone bank a debtor or a creditor by the result of the exchanges made between the banks at 8.30 a. m., settlement on March 20, 1891?

A. It was a debtor bank to the amount of $47,029.75.

Q. At that settlement other banks gave to the Keystone clerk, did they not, packages against the Keystone bank purporting to contain $117,035.21?

A. They did.

Q. After the packages had been thus received by the clerk of the Keystone bank what became of them?

A. They were left in a satchel in the custody of myself until the amount of the balance, $47,029.75 should be paid.

Q. Was that done in pursuance of an agreement made by the Keystone bank?

(Objected to as the agreements are already in evidence.)

Mr. Freedley replies that the witness was asked concerning this matter in his examination-in-chief, which implies the right to cross-examine upon it to the fullest extent.

A. It was.

Q. When was that agreement made by the bank, that the packages should be retained as security for the amount due at each particular settlement?

A. I cannot give the exact date, but I suppose it was about two months before the failure.

Q. Had it been acted upon every day during those two months that the Keystone was a debtor bank?

A. It had.

75 Q. Originally the Keystone bank gave security for the amount which might be against it upon these daily balances, did it not?

A. It did.

Q. Did you give receipts to the Keystone bank for such collaterals deposited by them as security for those daily balances?

A. I did.

Q. What was the nature of the collateral so deposited by the Keystone National bank?

A. Bills receivable.

Q. I now hand you a package containing eight receipts purprot-

ing to be signed by yourself and dated from October 7, 1890, to December 26, 1890, and ask you whether those are the receipts which you had given for the collaterals which previously were pledged by the Keystone bank as security for their daily balances?

A. Those are the receipts I gave.

Q. Are they all in the same form?

A. Yes, sir.

Q. Please read the form of one of them.

A. It reads as follows:

"Clearing House Association of Philadelphia.

"PHILADELPHIA, *October* 7, 1890.

"Received from the Keystone National bank bills and notes receivable amounting, as per list, to $25,509.80, which said bank has deposited with the Clearing House committee as collateral security in accordance with article XVII of the articles of this association, and also, with preamble and resolution adopted by the board of directors of that bank on the 15th day of June, 1880, the same
76 being accepted by the committee as such collateral security, with the express condition that neither the Clearing House Association, the Clearing House committee nor any member thereof shall be responsible for any loss on said collaterals arising from failure to make demand and protest or from any other neglect or omission other than the refusal to take some reasonable step which the said depositing bank may have previously required in writing.

"JOHN C. BOYD,
"*For Committee.*"

Q. When the Keystone bank desired the change to be made from the daily balance account to the loan-certificate account did you surrender and deliver these collaterals to the Keystone bank?

A. We did.

Q. Did you get a receipt for them?

A. I did.

Q. Does that receipt appear in your book containing a description of the collateral?

A. It does.

Q. Who gave you that receipt?

A. Mr. Divine of the Keystone bank.

Q. Upon what date was it given you?

A. The 30th of December, 1890.

Q. Is this paper an extract from your book containing all on that point? (Paper shown witness.)

A. It is. This is a copy.

(Paper marked "A. T. F., No. 5.")

Q. That paper is a receipt, is it not, by Mr. Divine on behalf of the Keystone bank for all securities which you held as collateral for the daily-balance settlement?

77 A. It is.

Q. And at the same time were the receipts delivered to

you which you had given for those collaterals when held as to the daily-balance settlement, which have just been read by you?

A. They were.

Q. After the securities had been thus delivered to the Keystone National bank did they redeliver them to the Clearing House committee?

A. They did.

Q. Upon what account?

A. As security for loan-certificate account.

Q. Did the committee or yourself on their behalf give them any receipt for such securities?

A. I gave them a receipt for such securities for the committee.

(Mr. Freedley calls on the plaintiff to produce the receipts given by the witness to the Keystone National bank on December 30, 1890, for the securities pledged by the Keystone National bank to the Clearing House committee on account of loan certificate issued.)

Q. The securities, I understand, which you then received were bills receivable, were they not?

A. They were.

Q. Did they mature at one time or at different times?

A. At different times.

Q. Were they in one envelope or several envelopes?

A. Several envelopes.

Q. As the securities matured prior to March 20, 1890, what became of them?

78 A. Exchanges were made between the Keystone bank and the committee. Substitutions were made.

Q. Do you mean that you surrendered to the Keystone bank matured paper and received from it other and unmatured paper?

A. Yes, sir.

Q. And at the same time that you received back the receipts which you gave on the day of December 30, 1890?

A. I did.

Q. Did you give other receipts in lieu and in substitution of these receipts?

A. I did.

Q. I hand you now eleven receipts dated December 30, 1890, purporting to be signed by you on behalf of the Clearing House committee and ask you what those represent?

A. These receipts I gave for the committee to the Keystone bank for security they deposited to secure the payment of loan certificates.

Q. They are all in one form?

A. Yes, sir. The form is as follows:

"PHILADELPHIA, *December* 30, 1890.

"Received from the Keystone National bank bills and notes receivable amounting to $674, which that bank has hypothecated with the Clearing House committee in conformity with the terms of agreement entered into by the banks of this city on the twenty-

fourth of September, 1873, as amended October 18, 1873, the same being accepted by the committee as such collateral security with the express condition that neither the Clearing House Association, the Clearing House committee, nor any member thereof, shall be responsible for any loss on said collaterals arising from fail-
79 ure to make demand and protest, or from any other neglect or omission other than the refusal to take some reasonable step which the said depositing bank may have previously required in writing.

"JOHN C. BOYD,
"*For Committee.*"

Q. After these certificates had been thus transferred and cash advanced upon them in the shape of loan certificates had you any security at all for any balance that the Keystone bank might appear to be the debtor for in the daily clearances?

A. We had not.

Q. After that date was or was not your only security the retention of the packages of the Keystone bank until it made good such settlement on such dates on which it happened to be a debtor bank?

A. It was.

Q. And that, I understand you, was done steadily after this exchange down to the date of the failure?

A. Yes, sir.

Q. Referring to the loan certificates, one of the receipts which you read referred to certain agreements of 1873. Are those the agreements that are set forth in the defendants' answer in this case?

A. Yes, sir.

Q. At the time and immediately prior to this transfer of the daily balances to the loan-certificate account what amount had been advanced to the Keystone National bank, to wit, immediately prior to December 30, 1890?

A. $625,000.

Q. What amount had been pledged by the Keystone bank as collateral to the payment of those loan certificates prior to December 30, 1890?

80 A. $570,000.

Q. Was that all pledged by the Keystone bank, or do you mean that was the amount you held from all sources? Did it embrace collaterals pledged by other parties?

A. It did not.

Q. Was all of that good paper?

A. A large amount of it proved to be worthless on maturity.

Q. Do I understand you that prior to December 30, 1890, the Keystone bank was a debtor for amounts advanced by the committee in the sum of $625,000 and the committee held therefor doubtful security amounting to but $570,000?

A. That is correct.

Q. You were also asked your information as to the financial con-

dition of the bank at or about the time this transfer was made. Had you received any official communication in reference to the solvency of the Keystone National bank at or about that time? Do you remember receiving a letter from Mr. Drew?

A. I do.

Q. Is that the letter?

(Letter handed witness.)

A. This is the letter. It reads as follows:

"NOVEMBER 29, 1890.

"DEAR MR. BOYD: There is no truth in the report of trouble at the Keystone. Nothing there more than usual.

"Yours very truly, W. P. DREW,

"*National Bank Examiner.*

"P. S.—There are rumors flying around in regard to this bank, and I thought I would report the facts to you."

81 Q. As a matter of fact, between November 30, 1890, and March 6, 1891, does the Keystone bank appear by those records to be a creditor at the different exchanges made between the banks between those times?

A. It does.

Q. Have you a paper showing the dates upon which such credits appear?

A. I have.

(Paper produced marked "A. T. F. No. 6.")

Q. On what date by the records did it appear to be a creditor bank?

A. November 30, 1890, December 5, December 10, December 18, December 24, 1890, January 30, February 4, February 6, February 7, February 10, February 11, February 12, February 16, February 19, February 20, February 24, February 27, February 28, March 3 and March 6, 1891.

Q. The result of the transactions at the close of the business day March 19, 1891, was as follows, was it not: The Keystone bank owed from its settlement on that day $23,031.44 and a balance of $359.08 at the morning settlement?

A. Yes, sir.

Q. And it also owed and had issued clearing-house due bills drawn in favor of other banks amounting to $17,806.84, had it not?

A. Yes, sir.

Q. Have you a form with you of the clearing-house due bill?

A. The form appears in rule 22 (p. 34) of the constitution of the Clearing House Association.

82 Q. That made altogether a sum at the close of the business day of March 19, 1891, of $41,197.36, did it not?

A. It did.

Q. And if the morning settlement of March 20, 1891, had been

completed by the Keystone bank paying the balance due by it, it would have had to pay $47,029.75 instead of $41,197.36, would it not?

A. It would.

Q. The morning settlement of March 20, 1891, showed that the Keystone bank brought and delivered to other banks $70,005.46, did it not?

A. It did.

Q. Did you or the committee or the association receive any part of the $70,005.46?

A. No, sir.

Q. Who got it?

A. The banks who had given the receipts for the packages delivered to them by the package clerks of the Keystone bank.

Q. Did those banks receipt directly to the Keystone bank for the $70,005.46 in the proportions in which they received it?

A. They did.

Q. The packages which contained the $117,035.21, which were received by the Keystone bank in your custody were not finally received, I understand you, by the Keystone bank, owing to their inability to make good the $47,029.78 under the terms of their verbal agreement which you have referred to, with the association?

A. That is correct.

Q. What became of those packages?

83 A. Those packages were taken to the banks who had brought them against the Keystone bank.

Q. Did they redeem by paying cash?

A. They did.

Q. Were the banks who redeemed those $117,000 necessarily the banks who received the $70,005.46 from the Keystone?

A. Not necessarily; no, sir.

Q. Do you or do you not mean that one set of banks got the $70,005.46 and that another set of banks got the $117,035.21 in cash?

A. I mean that one set got the $70,005.46 and another set, a portion of the banks, received the $117,035.21.

Q. Illustrate that more clearly.

A. If the $70,000 that they brought to that morning's exchange, if it had been drawn against, if the checks had been all in one package against one bank,—take the Farmers' and Mechanics' bank, for instance,—the Farmers' and Mechanics' bank would have receipted for it and taken the package to bank, where they would have opened it. When I came to receive the $117,000 from the other banks, if the Farmers' and Mechanics' bank had not a package against the Keystone bank, it would not have been necessary for me to call upon the Farmers' and Mechanics' bank to have made up any portion of these $117,000.

Q. The result of the whole transaction was, was it not, that there was a credit to the Keystone bank of $28,808.10?

A. Yes, sir.

Q. And was or was not that the only money arising in any way out of these exchanges or settlements that in any manner came into your hands as manager of the Clearing House Association?

84 A. That was the only money.

Q. To what was that $28,808.10 applied?

A. It was applied to cancelling loan certificates of the Keystone National bank.

Q. By whose order?

A. The Clearing House committee.

Q. You have said that the association and the committee have nothing to do with the daily exchanges. Has the committee anything personally to do with issuing the loan certificates?

A. They have.

Q. That stands on an entirely different basis, does it?

A. Entirely different basis.

Q. And so stands under the resolutions that have been referred to?

A. Yes, sir.

Q. What was the indebtedness of the Keystone bank to the Clearing House committee at the date these $28,808.10 were applied in partial satisfaction?

A. $335,000.

Q. Did or did not that indebtedness arise exclusively by reason of the Keystone bank having been a member of the Clearing House Association?

A. It arose exclusively from its being a member of the Clearing House Association.

Q. Were any loan certificates or advances made by the committee of the association to banks that were not members of the Clearing House Association?

A. No, sir; or never have been.

Q. I notice your receipt which has been in evidence being

85 "Exhibit No. 4," purports on March 13, 1891, to receipt for $575,383.79 from the Keystone bank. As a matter of fact, did you receive that amount from the Keystone bank?

A. No, sir.

Q. Explain fully what amount you did receive from the bank and what from others.

A. This amount includes two notes for $50,000 each given by Granville B. Haines and Charles McFadden to the clearing-house, and never were the property of the Keystone bank.

Q. Those two notes the committee received directly from the parties?

A. Yes, sir. And the other $475,000 was security given by the bank.

Q. They were simply for the purpose of convenience put into the one receipt?

A. Yes, sir; simply for the purpose of convenience.

Q. You have been asked today whether $100,000 of Baltimore Traction Company five per cent. bonds were ever held by the asso-

ciation or the committee as security for daily balances. What was your reply to that?

A. My reply was that they were not.

Q. For what were they held?

A. As collateral for loan certificates.

Q. Have you the original of the receipt printed upon page 4 of defendants' answer?

A. I have.

Q. Were the bonds received by the committee upon that day and for the purposes mentioned in that receipt?

A. They were.

Adjourned until Wednesday, December 7, 1892, 3.30 p. m.

86 WEDNESDAY, *December* 14, 1892—3.30 p. m.

Present: Silas Pettit, Esq. for plaintiff; A. T. Freedley, Esq., for defendant-.

Continuation of cross-examination of JOHN C. BOYD.

By Mr. FREEDLEY:

Q. You were requested to produce the original of the receipt giving by you for the $100,000 Baltimore Traction bonds. Have you that receipt?

A. I have. It is as follows:

"PHILADELPHIA, *December* 2, 1890.

"Received from Keystone National bank securities amounting to $100,000 which that bank has hypothecated with the Clearing House committee in conformity with the terms of the agreement entered into by the banks of this city on the 24th of September, 1873, as amended October 18, 1873.

"JOHN C. BOYD,
"*For the Committee.*

"Statement of securities:

"$100,000 Baltimore Traction Company five per cent. coupon bonds."

(Receipt produced marked for identification "A. T. F., No. 7.")

Q. When did the committee receive those bonds?

A. December 2, 1890.

87 Q. What amount did they advance upon that security?

A. $360,000.

Q. They received, I suppose, other securities?

A. They received other securities at the same time.

Q. How much?

A. Bills receivable to the amount of $264,507.16.

Q. Upon receiving bills receivable for $264,507.16, and $100,000 of the Baltimore Traction Railroad bonds, they advanced, I understand you, $360,000?

A. That is correct.

Q. What became of the Baltimore Traction bonds?

A. The Baltimore Traction bonds were sold by Drexel & Company on behalf of the Clearing House committee, and the proceeds credited to extinguishing the loan certificates of the Keystone bank.

Q. You were asked in your examination in this case as to what was the nature of a due bill, and I do not see by the notes that any reply seems to have been given to that. Kindly explain what a clearing-house due bill is.

A. A clearing-house due bill is equivalent to cash and is used between the bank members of the association for convenience and safety, and is payable only in the exchanges on the day after issue. It is put in the exchanges the same night and comes in the next morning.

A. When you say it is used for the purposes of convenience and safety, what do you mean by that?

A. The runner of one bank in making collections upon another bank accepts the due bill of that bank in lieu of cash, and in that way is safe from risk of robbery or loss in transmission of funds from bank to bank.

Q. Have you a blank form of one of the due bills?

88 A. I have and now produce the same.

(Form produced by witness marked "A. T. F., No. 8.")

Q. You have testified that neither the Clearing House committee nor the Clearing House Association nor you as manager have anything to do with the exchanges made between the banks twice a day except to record totals of indebtedness. Do you settle those totals?

A. I receive the balances due the clearing-house in these settlements from the debtor banks and pay them over to the creditor banks.

Q. Do you pay them over to the creditor banks before you get the money from the debtor banks?

A. Never. No, sir.

Q. For whom are you acting when you pay the money over to the creditor banks?

A. I am acting for the debtor banks.

Q. Has the association any money of its own or any capital of its own that can be used for this purpose?

A. None whatever.

Q. Has it any capital or money of any amount except to pay current expenses?

A. No, sir.

Q. By current expenses you mean the manager's salary and the rent of room?

A. Yes, sir. Sundry expenses.

Mr. PETTIT: In response to Mr. Freedley's call I produce receipts given on March 19th by the different banks to the Keystone National bank at the 8.30 a. m. settlement. This is dated

89 March 18, 1891, but as a matter of fact was made up in the

evening, and is the paper that was delivered in the morning, and corresponds with the amount stated on "Exhibit A. T. F, No. 1."

(Paper produced marked for identification "A. T. F. No. 9.")

In response to Mr. Freedley's call for the receipts given by various banks to the Keystone National bank for packages they received from the Keystone bank the morning of March 20, 1891, Mr. Pettit answers that diligent search has been made for that paper, but it cannot be found.

In response to Mr. Freedley's call for the receipt given by the various banks to the Keystone bank for packages, which they received from the Keystone bank in the runners' exchange on March 19, 1891, Mr. Pettit produced the same, which was marked for identification, "A. T. F., No. 10."

In response to call for the settling sheets received by the Keystone National bank on March 19, 1891, Mr. Pettit produced paper, which is marked for identification, "A. T. F., No. 11."

In response to said call in respect to settling sheet of March 20, 1891, Mr. Pettit replies that diligent search has been made for the same and that it cannot be found.

In answer to the plaintiff's call made since the last meeting in this case to produce the receipt given by the Clearing House committee to the Keystone National bank for the Baltimore Traction Company bonds, Mr. Freedley produced receipt dated December 2, 1890, said receipt having been previously marked in this case for identification, "A. T. F., No. 7."

(The above receipt is now offered in evidence by Mr. Pettit.)

90 In answer to the call of the plaintiff to produce the amount of the clearing-house loan certificates issued by the Keystone National bank and outstanding March 20, 1891, showing which have been paid and when and the balance, if any, remaining due, Mr. Freedley produced the information desired.

(Paper produced offered in evidence by Mr. Pettit and marked "Exhibit No. 5.")

In answer to the plaintiff's notice to produce statement of the dates and amounts for which the Keystone bank was debtor to the clearing-house on the daily settlement between November 30th and March 20th, 1891, Mr. Freedly produced the same.

(Paper produced offered in evidence by Mr. Pettit and marked "Exhibit No. 6.")

Mr. Pettit offered in evidence the account of the collateral held by the Philadelphia clearing-house on March 20th, 1891, showing the names and amounts and due dates of the commercial paper deposited by the Keystone National bank with the clearing-house as collateral for loan certificates, with a statement of what amount had been collected thereon, the footings of which show as follows:

Cash collected		$228,632 55
Unpaid notes		331,941 47
Balance due on notes in course of collection		16,397 72
Total		$576,971 74
Less interest	$1,442 48	
Costs repaid	145 86	
		1,588 34
		$575,383 40

which is the amount of the collateral receipted for in the last receipt.

91 (Paper produced marked "Exhibit No. 7.")

(Mr. Freedly objected as utterly immaterial and irrelevant and encumbering the record with extraneous matter.)

Redirect examination.

By Mr. PETTIT:

Q. As I understand your statements, the loan certificates issued to the Keystone bank and outstanding on the 20th of March, when the bank closed its doors, were $335,000?

A. That is correct.

Q. On account of that you have collected the proceeds of the Baltimore Traction Company's bonds of $100,000, have you not?

A. Yes, sir.

Q. Do you recollect how much it was?

A. $94,000.

Q. And that left $241,000 still due?

A. Yes, sir.

Q. And for that did you have any other collateral except the notes mentioned in Exhibit No. 7?

A. No, sir.

Q. By this account it appears you have collected in cash from those notes $228,632.55, leaving a balance of $12,367.45. Has not that been paid to the clearing-house?

A. I cannot answer as to those exact figures until I examine the books.

Q. Is there anything now due to the Clearing House Association by the Keystone National bank for account of loan certificates?

A. No, sir.

92 Q. Can you not tell us from memory from what source these $12,367.45 just spoken of were paid?

A. $335,000 that were due on loan certificates on March 20th were paid by applying $28,808.10 shown in this statement read by me as a part of my testimony on November 16th, and the remainder of the debt of these $335,000, after deducting $28,000, was paid from the collateral that we held at that time.

(It is agreed between counsel that the statement referred to by witness shall hereafter be called "Exhibit A.")

Q. The deduction of the $28,808.10 would have left the balance $306,191.90, would it not?

A. Yes, sir.

Q. Then deducting the $94,000 received from the sale of the Baltimore Traction bonds the balance would have been $212,191.90, would it not?

A. Yes, sir.

Q. And on account of that balance you have collected in cash $228,632.55 plus $1,588.34, making $230,220.89?

A. Yes, sir.

Q. The difference between that $230,000 and the $212,000 that was due you is made up by the interest account on the loan certificates and the expense of the collection of those notes?

A. Yes, sir.

Mr. Pettit calls for a statement of the interest account on the loan certificates.

Q. In the unpaid notes on hand $331,941.47 are included four notes of $50,000 each, made by Messrs. McFadden, Haines, Yard and Lucas respectively, are there not?

93 A. Yes, sir.

Q. Those notes were received not as being the property of the bank, but as being given to secure the clearing-house for the bank's indebtedness, were they not?

A. I only know as to two of them, Haines and McFadden. There were not given by the bank; they were given by the individuals to the committee direct.

Q. In respect to the notes of Lucas and Yard, do you know how they were?

A. They were received as the other bills receivable came in from the bank.

Q. When were the notes of Haines and McFadden received?

A. On the 2d day of December, 1890.

Q. Your statement, which we have agreed to call "Exhibit A," shows that the clearing-house got in payment of the debtor balance of the Keystone National bank for the two settlements of March 19th, $23,390.52. If the Keystone bank had not brought its packages to the clearing-house on the morning of March 20th and left them there, where would the clearing-house have collected that $23,390.52?

A. You mean, in other words, if they had not come in the morning exchange how the runner's due bill of the preceding day would have been collected?

Q. Yes.

A. According to the rules and regulations it would be a first claim against their collaterals that they had deposited in the clearing-house.

Q. And then that much more would have to have been collected out of these notes included in "Exhibit No. 7"?

A. Yes, sir.

94 Q. And if there had been any deficiency in collecting that money, the other banks, members of the clearing-house, would have had to contribute it in their proportions according to the rules, would they not?

A. Yes, sir.

Q. According to "Exhibit A," the clearing-house got out of the result of the exchanges on the morning of March 20th and applied to the cancellation of loan certificates the sum of $28,808.10. If the Keystone bank had not appeared at the clearing-house on March 20th and left its packages there, where would the clearing-house have obtained payment of that $28,808.10?

A. From the securities deposited for loan certificates.

Q. That is to say, from the securities enumerated in "Exhibit No. 7"?

A. Yes, sir.

Q. And there would have been that much additional to come out of them?

A. Yes, sir.

Q. And suppose that there had been any deficit in making that collection out of these securities, from what source would the clearing-house have been paid the amount of these loan certificates?

A. By assessment upon the other banks under their loan-certificate agreement with the clearing-house.

Q. By "Exhibit A," it appears that six banks therein named received from the clearing-house payment of due bills issued by the Keystone National bank amounting in the aggregate to $17,806.84. From what source would those six banks have recovered the

95 amount of these due bills if the Keystone National bank had not appeared at the clearing-house on March 20th?

A. According to the rules and regulations, from collaterals deposited with the committee.

Q. Would or not their claims have been preferred to the claim of the Clearing House Association?

A. The runners' exchange of the previous day would have been paid first, then the others would all come in on one footing. We have never had a case of that sort.

Q. Do you mean to say that the corn exchange claim for $5,000 would have come in on the same footing as the claim of the Clearing House Association?

A. Yes, sir.

Q. And any deficit would have been paid the same way, by assessment?

A. Yes, sir.

Q. And if there was a recovery in this case against the Clearing House Association, how would it be paid?

(Mr. Freedley objects as involving a question of legal construction.)

A. I cannot say what would be done in that case.

Q. Do you mean you do not know or do not want to say?

A. I mean I do not know. We have never had a case of that kind.

Q. Do you mean to say it has never before occurred that the clearing-house was not secured? Is that it?

A. That is what I mean.

Q. Has it never occurred that the Clearing House Association has made a loss?

A. No, sir. They never made a loss by any failure of a bank.

96 Q. Has it never occurred that the Clearing House Association has had to make an assessmeut on its members for other than the expenses for running, the mere salaries and office expenses, etc.?

(Mr. Freedley objected as immaterial and irrelevant.)

A. No assessment has ever been made to my knowledge for any purpose but for current expenses.

Q. In previous cases of insolvent banks was the settlement at the clearing-house made under article XI of the constitution of the Clearing House Association or not?

(Objected to.)

A. There has been but one case, and I was not manager at that time and I do not know how the settlement was made.

Q. I understand that these packages of checks alleged and supposed to amount to $117,035.21 were left with you to be handed over on payment of $47,029.75?

(Mr. Freedley objected, that this is not proper re-examination, as the matter has been fully gone into in examination-in-chief and cross-examination.)

A. That is correct.

Q. That balance of $47,029.75 was not paid to you, was it?

A. No, sir.

Q. Did you or not hold the $117,035.21 until all the banks presenting the same had paid that amount into the clearing-house?

(Objection renewed.)

97 A. The packages of that amount were left in my custody and they were redeemed by the banks.

Q. Until you had the whole $117,000?

A. Yes, sir.

Q. And then the settlement was made of the day just as though those checks had not been presented, was it not?

(Objected to.)

A. The settlement would have been made by their paying $47,000.

Q. But as a matter of fact it was made just as though those checks had not been presented; each bank which presented the check paid in the same amount it had gotten credit for and took the checks back?

A. Yes, sir.

Q. The result of that was you had $70,005.46 more in hand than the debtor balance called for?

A. The statement shows that we had that amount of money.

Q. And then you applied that to the payment of your own debt and the debt of these six banks, according to "Exhibit A"?

A. Yes, sir.

Recross-examination.

By Mr. FREEDLEY:

Q. I do not think you understood one of Mr. Pettit's last questions. He asked you whether the record of your settlement
98 was made after the settlement banks redeemed $117,000 or before it. Was or was not the morning settlement made at the appointed time?

A. The morning settlement was regularly made.

Q. Does that settlement disclose in the usual way in which the settlement was made, the totals received to and from the different banks?

A. It does.

Q. Was that settlement affected, as far as your record of the settlement went, in any way by the redemption of the $117,000 which the banks had presented against the Keystone bank?

A. It was not affected.

Q. As a matter of fact, to make your settlement good upon the record made at the regular time, viz: at that a. m., were any banks required, in order to balance your accounts, to redeem the $117,000 of packages by paying that amount in cash?

A. Yes, sir; they were.

Q. The reason of which was, was it not, that the Keystone bank had not taken away the packages representing that $117,000.

A. That was the reason.

By Mr. PETTIT:

Q. Referring to "Exhibit No. 3," in the different debits and credits given to the various banks, the checks drawn on and presented by the Keystone National bank were treated as cash in the same way as were the checks drawn on or deposited by the other forty-two banks, were they not?

A. They were.

(Adjourned.)

99 SATURDAY, *March* 18, 1893—1 p. m.

Present: Messrs. Pettit & Freedley, of counsel.

John C. Boyd.

Cross-examination resumed.

By Mr. FREEDLEY:

Q. You stated on page 23 of the testimony that the benefit of the

$70,005.46 was gotten. Please state whether the Keystone bank got the benefit of this sum, and if so, how?

A. The Keystone bank got the benefit of it by our committee paying $70,005.46 of the Keystone's indebtedness. It also released that amount of collateral from any indebtedness to the Clearing House committee.

Q. In fact, the whole sum of $70,005.46 was applied to the debt of the Keystone bank alone, was it not?

A. It was.

Q. You stated on page 37 of the testimony, referring to due bills, that they were charged back to protect the banks that held them. Please explain that a little more fully.

A. The clearing-house due bills were treated as cash, and were payable in cash in the next morning's exchanges. The Keystone bank received full value for them, and they represent what the Keystone bank would have had to pay in cash the previous
100 day, if there were no such system as clearing-house due bills. If the Keystone bank had not given the due bills, they would have been obliged to have given the cash. Hence there was so much more cash passed into the receiver's hands, and if they had not the cash, then they would have had to realize out of the $70,005.46, and just that much less of the $70,005.46 would they have sent to the clearing-house the next morning. Hence to protect the bank's means, the banks were holders for value of the due bills representing cash; they had surrendered notes and checks to the Keystone bank, for which clearing-house due bills had been given, and they were unable to charge them up against their customers. Clearing-house due bills are considered always as cash at the clearing-house, and they are expressed as such on the face of the due bills.

Q. When you made reclamation on the banks for $117,035.21, did your own records show what banks had got that sum of $70,005.46?

A. Our own records did not show it.

Q. How did you obtain information to make the reclamation?

A. I sent up to the Keystone bank and asked for their settlement sheets of that day—settlement and package sheets.

Q. Did you get them from them?

A. I did. Otherwise I could not have known which banks to have called upon to return the $117,000.

Q. Have you, since the last meeting in this case, examined the papers in your possession to see if you had those papers, and if so, did you find them?

A. After Mr. Divine testified that he was unable to find the papers, I made another search and found them amongst our papers, in his vault.

101 Q. Why is Exhibit No. 11 dated 3d, 10th, 1891?

A. Because it is made up at the bank the evening before—the day before.

Redirect examination.

By Mr. PETTIT:

Q. (Paper shown witness.) What is that paper?
A. It is an account of the payments of loan certificates issued by the Clearing House committee to the Keystone National bank.

Mr. Pettit offers said paper in evidence, and it is marked Exhibit "No. 7."

Q. The cash credit shown on this account, Exhibit No. 7, for $28,808.10, is the same shown in Exhibit A, is it not?
A. It is.

(Letter dated First National bank, Philadelphia, March 24, 1891, signed George Philler, addressed to W. P. Drew, shown witness.)

Q. Are you familiar with Mr. Philler's signature?
A. I am.
Q. Is that his signature?
A It is.
Q. What connection had Mr. Philler with the Clearing House committee at that time?
A. He was a member of the Clearing House committee at that time.

Mr. Pettit offers said paper in evidence, and it is marked "Exhibit No. 8."

Q. The bonds referred to in that letter are bonds credited in the account. "Exhibit No. 7," are they not?
102 A. Yes, they are the same bonds.

(Receipt dated Philadelphia clearing-house, March 25, 1891, signed John C. Boyd, manager, shown witness.)

Q. Is that your receipt?
A. It is.
Q. Is or not the proceeds of the note of M. R. Wood, therein mentioned, the item included in the account with which the Keystone bank is credited in "Exhibit No. 7," for $700?
A. It is.

Said paper is offered in evidence by Mr. Pettit, and marked "Exhibit No. 9."

Q. (Paper shown witness, being "interest on clearing-house loan certificates of Keystone bank, from March 1, 1891, to February 1, 1892, aggregating $3,910.81.) Is or not that a statement in detail of the interest with which the Keystone National bank is charged in "Exhibit No. 7"?
A. It is.

Said paper offered in evidence by Mr. Pettit and marked "Exhibit No. 10."

Q. Was any receipt given to the clearing-house by the banks which received the $17,896.84 included in "Exhibit A"?

A. Yes, sir.

Q. What was the nature of the receipt?

A. I do not remember. I stuck it away at the time. It was simply a statement that they had received from the clearing-house the amount of the due bills that came through the exchange of the 20th of March, which they had presented to the Clearing House committee for redemption.

Q. What else was in that receipt?

103 A. The amount was stated—that is, the exact amount of the due bills. It was a very short receipt, according to my recollection.

Q. Was there anything in the paper but the bare receipt for the money?

A. Not to my recollection. It was a bare receipt.

Q. Was there any agreement expressed in the receipt by which the six banks named in "Exhibit A" became responsible in any contingency to refund the amount that was received?

A. No, sir; there was nothing of that kind stated.

Q. Was there any paper to that effect given at that time?

A. No, sir.

Q. Was there any agreement made to that effect, directly or indirectly?

A. No, sir; it was simply a receipt showing that I had paid to the banks the amount of the due bills that they had presented.

Q. And the due bills themselves showed that, did they not?

A. Yes, sir.

Q. Then what was the object in taking the receipt?

A. Well, you take a receipt for any amount of money that you hand out.

Q. What reason can you give for the fact that the settlement of March 20th, with the Keystone bank, as one of the associated banks which failed to appear at the clearing-house at the proper hour prepared to pay the balance against it, was not made under article eleven of the constitution of the Clearing House Association of the Banks of Philadelphia?

104 A. After consulting with the committee—in short, I was directed to do it in the way I did.

Q. Then all you know about it is that, as manager, you obeyed the direction of the Clearing House committee given you after you heard that the Keystone bank had closed?

A. Yes, exactly.

Recross-examination.

By Mr. FREEDLEY:

Q. The note of M. R. Wood that you have been asked about to-day—has that anything to do with the packages amounting to $70,005.46?

A. Nothing whatever.

Q. What were the facts about the M. R. Wood note?

A. Among the collaterals given by the Keystone bank to the

Clearing House committee was a note signed M. R. Wood, with collateral—I do not remember what the collateral was—and we notified the maker to come to the clearing-house and take up the note. I think there was a demand note with the collateral. On the day when payment was made, it transpired that two notes had been given, and the collateral mentioned on the note that we held covered both notes, so the examiner, Mr. Drew, sent me down the other note which I gave that receipt for, and the money came into our possession, and it so appears on that account.

Q. Did you or did you not credit the Keystone bank with the entire amount which you received?

Q. We did; yes, sir.

Plaintiff closes.

105 *Defendants' Evidence.*

Mr. Freedley offers in evidence receipt given March 20th, 1891, by certain national banks receiving from the Keystone bank packages amounting to $70,005.46, the receipt being from the banks receiving the packages, to the Keystone bank, who delivered them. Marked "Exhibit No. 11."

Also, form of debtor and creditor slip presented by Keystone bank to the manager of the clearing-house, from which the latter makes up clearing-house records. Marked "Exhibit No. 12."

Also, constitution, rules, and regulations of the Clearing House Association with the banks of Philadelphia. Marked "Exhibit No. 13."

Also, Keystone National bank's clerks' settling sheet, being the receipts from the Keystone bank to other banks, from whom it received packages amounting to $117,035.21 on March 20th, 1891. Marked "Exhibit No. 14."

Also, receipt given by Mr. Divine, of the Keystone bank, December 30th, 1890, for collaterals formerly held by the Clearing House committee on account of daily balance settlements. Marked "Exhibit No. 15."

Also, statement of Keystone National bank's daily credit balances from November 20, 1890. Marked "Exhibit No. 16."

Also, receipt of Clearing House committee to Keystone National bank, dated December 2, 1890, for $100,000, Baltimore Traction Company five per cent. coupon bonds. Marked "Exhibit No. 17."

106 Also, a copy of form of clearing-house due bill issued by the bank to banks. Marked "Exhibit No. 18."

Also, paper produced by plaintiffs on call, being receipt given by national banks to Keystone National bank on morning exchange of March 19, 1891, for packages received by said banks from Keystone National bank on that morning. Marked "Exhibit No. 19."

Also, receipt given by national banks to the Keystone National bank, for packages received by said banks from Keystone National bank at runners' exchange on March 19, 1891, said paper being produced by plaintiffs on call. Marked "Exhibit No. 20."

Also, clerks' settling sheet of Keystone National bank, March 19, 1891, being copies of receipts for packages received by the Keystone bank from other banks, and produced by plaintiffs on call. Marked "Exhibit No. 21."

Also, resolutions of various banks, members of Clearing House Association, of September 24th, 1873, as amended October 18, 1873, authorizing the issuance of loan certificates, being the agreement recited in defendants' answer, page 5. Marked "Exhibit No. 22."

Also, letter, William P. Drew, bank examiner, dated November 29, 1890. Marked "Exhibit No. 23."

Also, agreement of counsel in respect to two suits, one brought by Crane, Parris & Co., and the other by the Second National Bank of New York against the Clearing House committee, for proceeds of certain drafts which are alleged to form part of the $70,005.46. Marked "Exhibit No. 24."

Testimony closed.

107 "EXHIBIT No. 1."

Philadelphia clearing-house.

Thursday—Manager's Settlement—March 19, 1891.

Debtor banks.	Total debits.	No.	Banks.	Total credits.	Creditor banks.
	$1,133,116 78	1	Philadelphia National.	$1,215,239 90	$82,123 12
	310,597 25	2	North America.....	525,929 50	215,332 25
	515,095 67	3	Farm's' & Mech's' National.	669,521 14	154,425 47
$67,386 28	241,450 08	4	Commercial National..	174,063 80	
23,134 71	121,853 24	5	Mechanics' National..	98,718 53	
9,904 31	137,420 32	6	National Bk. N. Liberties.	127,516 01	
21,494 50	57,511 59	7	Southwark National...	36,017 09	
	50,059 09	8	Kensington National..	56,701 61	6,642 52
	183,680 76	9	Penn National.....	213,239 06	29,558 30
	184,128 07	10	Western National.....	314,244 15	130,116 08
	80,990 95	11	Manufacturers' National.	120,297 25	39,306 30
	11,017 57	12	National Bk. of Commerce.	28,935 64	17,918 07
124,597 88	730,253 61	13	Girard National.....	605,655 73	
168,664 40	304,438 85	14	Tradesmen's National.	155,774 45	
	37,341 02	15	Consolidation National	76,120 29	38,779 27
	38,987 97	16	City National.....	39,993 41	1,005 44
	19,069 22	17	Commonwealth National.	26,912 86	7,843 64
	114,970 60	18	Corn Exchange National.	136,188 40	21,217 80
36 45	91,452 81	19	Union National.....	91,416 36	
158,283 10	711,830 46	20	First National.....	553,547 36	
43,031 35	114,937 53	21	Third National.....	71,906 18	
9,653 98	39,630 02	23	Sixth National.....	29,976 04	
9,991 54	82,057 42	24	Seventh National....	72,065 88	
26,354 64	100,305 82	25	Eighth National.....	73,951 18	
21,315 68	600,965 82	26	Central National.....	579,650 14	
	140,715 90	27	National Bk. of the Republic.	226,111 40	85,395 50
29,641 55	84,336 51	28	National Security.....	54,694 96	
55,120 59	110,688 04	29	Centennial National..	55,567 45	
24,099 62	219,946 14	30	Merchants' National..	195,846 52	
75,359 08	230,495 49	31	Keystone.....	155,136 41	
	154,366 24	32	Independence National.	201,369 47	47,003 23
	56,024 65	33	Ninth National.....	97,360 44	41,335 79
18,152 00	52,263 52	34	Tenth National.....	34,111 52	
	56,147 35	35	Spring Garden.....	57,189 13	1,041 78
	41,301 17	36	Northwestern National	45,374 07	4,072 90
25,339 78	40,949 21	37	Southwestern National	15,609 43	
11,423 99	43,071 68	38	Produce.....	31,647 69	
	449,631 86	39	Fourth Street National	467,519 19	17,887 33
31,197 57	107,638 34	40	Market Street National	76,440 77	
	113,746 62	41	Chestnut St. National.	149,476 65	35,720 03
20,520 57	39,338 64	42	Quaker City National.	18,818 07	
2,031 25	26,510 13	43	Northern National....	24,478 88	
$976,734 82	$7,980,334 01	....	Aggregate.....	$7,980,334 01	$976,734 82
			Runners' exchange....	2,513,347 46	446,229 58
				$10,493,681 47	$1,422,964 40

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"EXHIBIT No. 2."

Philadelphia clearing-house, runners' exchange.

Thursday—Manager's Settlement—March 19, 1891.

Balance due to clearing-house.	No.	Banks.	Balance due to banks.	Clearings.
$3,799 14	1	Philadelphia		$195,191 38
9,469 88	2	North America		231,901 66
88,176 87	3	Farmers' and Mechanics'		130,393 55
	4	Commercial	$22,871 76	56,561 36
6,199 17	5	Mechanics'		36,735 74
8,134 87	6	Northern Liberties		39,526 36
	7	Southwark	23,918 04	30,631 47
	8	Kensington	34,594 93	48,869 88
19,442 96	9	Penn		50,595 40
	10	Western	14,086 77	100,200 30
	11	Manufacturers'	2,310 88	56,359 94
22,251 71	12	Commerce		26,295 18
18,941 11	13	Girard		211,897 27
	14	Tradesmen's	16,896 49	125,130 50
	15	Consolidation	49,251 62	83,645 56
	16	City	6,936 47	30,965 34
6,489 88	17	Commonwealth		1,258 53
	18	Corn Exchange	87,300 55	131,478 67
8,134 61	19	Union		107,351 49
	20	First	21,535 73	241,425 63
1,230 10	21	Third		48,801 46
6,310 11	23	Sixth		2,060 69
25,939 44	24	Seventh		33,476 06
	25	Eighth	24,118 88	46,045 86
	26	Central	13,756 53	229,362 53
117,661 56	27	Republic		43,176 00
25,354 68	28	Security		451 79
1,417 88	29	Centennial		33,366 09
12,938 58	30	Merchants'		89,893 67
23,031 44	31	Keystone		7,024 18
4,457 23	32	Independence		53,111 44
4,626 29	33	Ninth		9,856 16
5,654 90	34	Tenth		3,987 86
4,433 14	35	Spring Garden		11,435 85
10,893 74	36	Northwestern		1,659 02
	37	Southwestern	9,513 67	13,548 79
	38	Produce	1,335 38	11,027 69
	39	Fourth Street	23,992 23	202,638 22
	40	Market Street	91,382 19	136,596 57
7,610 52	41	Chestnut Street		36,706 77
	42	Quaker City	2,427 46	8,927 91
3,629 77	43	Northern		7 20
$446,229 58			$446,229 58	$2,959,577 02
		Less balance		446,229 58
				$2,513,347 46

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"EXHIBIT No. 3."

Philadelphia clearing-house.

Friday—Manager's Settlement—March 20, 1891.

Debtor bank.	Total debit.	No.	Banks.	Total credits.	Creditor banks.
$52,440 28	$906,290 21	1	Philadelphia National.	$853,849 93	
104,550 49	333,940 36	2	North America.....	229,389 87	
	522,436 37	3	Farm's' & Mech's' National.	579,572 71	57,136 34
6,727 49	100,223 24	4	Commercial National.	93,495 75	
2,605 09	52,014 62	5	Mechanics' National..	49,409 53	
49,141 08	117,886 18	6	National Bk. N. Liberties.	68,745 10	
	16,695 32	7	Southwark National...	30,419 55	13,724 23
	35,944 21	8	Kensington National..	57,269 57	21,325 36
	116,357 70	9	Penn National.....	140,208 12	23,850 42
50,080 32	151,388 65	10	Western National.....	101,308 33	
13,453 29	59,420 72	11	Manufacturers' National.	45,967 43	
	36,147 29	12	National Bk. of Commerce.	44,890 48	8,743 19
	507,212 67	13	Girard National	636,850 31	129,637 64
	117,454 26	14	Tradesmen's National.	149,843 19	32,388 93
	56,002 25	15	Consolidation National	94,316 21	38,313 96
	23,749 46	16	City National.....	27,538 78	3,789 32
	24,664 59	17	Commonwealth National.	31,335 12	6,670 53
4,698 72	189,928 65	18	Corn Exchange National.	185,229 93	
	83,473 44	19	Union National.....	92,810 71	9,337 27
92,577 75	915,262 66	20	First National.	822,684 91	
	39,541 64	21	Third National.....	49,168 62	9,626 98
11,775 80	40,159 65	23	Sixth National	28,383 85	
8,362 63	80,240 18	24	Seventh National.....	71,877 55	
20,101 04	86,698 32	25	Eighth National.....	66,597 28	
	288,545 79	26	Central National.....	480,601 27	192,055 48
56,574 55	190,444 56	27	National Bk. of the Republic.	133,870 01	
18,584 13	74,325 62	28	National Security.....	55,741 49	
	37,956 13	29	Centennial National..	95,298 83	57,342 70
	103,396 89	30	Merchants' National..	168,835 71	65,438 82
47,029 75	117,035 21	31	Keystone.....	70,005 46	
82,800 06	138,649 85	32	Independence National.	55,849 79	
	39,589 81	33	Ninth National.....	40,323 58	733 77
20,418 67	30,512 66	34	Tenth National.....	10,093 99	
9,281 26	47,551 94	35	Spring Garden.....	38,270 68	
10,637 04	37,906 92	36	Northwestern National	27,269 88	
	16,437 37	37	Southwestern National	31,466 54	15,029 17
	20,632 33	38	Produce.....	32,603 51	11,971 18
126,347 60	488,075 01	39	Fourth Street National.	361,727 41	
	49,401 07	40	Market Street National.	160,878 46	111,477 39
5,241 06	94,721 85	41	Chestnut St. National.	89,480 79	
10,120 35	26,738 09	42	Quaker City National.	16,617 74	
5,044 23	19,387 58	43	Northern National...	14,343 35	
$808,592 68	$6,434,441 32	....	Aggregate.....	$6,434,441 32	$808,592 68
			Runners' exchange....	2,236,948 17	572,885 47
				$8,671,389 49	$1,381,478 15

110 "EXHIBIT No. 4."

Security for Loan Certificates.

PHILADELPHIA, *March* 13, 1891.

Received from Keystone National bank, bills and notes receivable amounting to five hundred and seventy-five thousand, three hundred and eighty-three $\frac{7}{100}$ dollars, which that bank has hypothecated with the Clearing House committee in conformity with the terms of the agreement entered into by the banks of this city, on the 24th September, 1873, as amended October 18, 1873, the same being accepted by the committee as such collateral security, with the express condition that neither the Clearing House Association, the Clearing House committee, nor any member thereof, shall be responsible for any loss on said collaterals arising from failure to make demand and protest, or from any other neglect or omission, other than the refusal to take some reasonable step which the said depositing bank may have previously required in writing.

(Signed) JNO. C. BOYD,
For Committee.

$575,383.79.

111 "EXHIBIT No. 5."

Keystone National bank.

	Loan certificates issued.		Loan certificates cancelled.
1890.		1890.	
Nov. 20.....	$150,000 00	Dec. 6.....	$10,000 00
" 21.....	50,000 00	" 8.....	15,000 00
" 26.....	50,000 00	" 15.....	5,000 00
Dec. 1.....	95,000 00	" 17.....	5,000 00
" 2.....	270,000 00	" 18	5,000 00
" 2.....	90,000 00	" 19.....	10,000 00
" 3.....	25,000 00	" 20.....	15,000 00
		" 22.....	15,000 00
		" 24...	10,000 00
		" 29.....	15,000 00
		" 31.....	15,000 00
		1891.	
		Jan. 2.....	5,000 00
		" 6.....	15,000 00
		" 8.....	5,000 00
		" 12.....	5,000 00
		" 13.....	5,000 00
		" 19.... ...	5,000 00
		" 20.....	5,000 00
		" 21.....	5,000 00
		" 22.....	10,000 00
		" 23.....	5,000 00
		" 27.....	5,000 00
		" 28.....	5,000 00
		" 30...	10,000 00
		" 31.....	5,000 00
		Feb. 5.....	5,000 00
		" 6.....	15,000 00
		" 10	15,000 00
		" 11.....	10,000 00
		" 12.... ...	15,000 00
		" 13.....	15,000 00
		" 16.....	15,000 00
		" 20.....	5,000 00
		" 25.....	15,000 00
		" 26.....	25,000 00
		" 28.....	10,000 00
		Mar. 3.....	5,000 00
		" 4.....	10,000 00
		" 6.... ..	10,000 00
		" 7.....	5,000 00
		" 11.....	10,000 00
Am't forward.	$730,000 00	.....	$395,000 00

"Exhibit No. 5"—Continued.

112	Loan certificates issued.		Loan certificates cancelled.
1890.		1891.	
Bro't forward.	$730,000 00	.....	$395,000 00
		Mar. 20.....	45,000 00
		" 25.....	90,000 00
		" 25.....	5,000 00
		" 30.....	5,000 00
		Ap'l 3.....	5,000 00
		" 8.....	5,000 00
		" 10.....	5,000 00
		" 14.....	5,000 00
		" 16.....	5,000 00
		" 21.....	5,000 00
		" 22.....	5,000 00
		" 23.....	5,000 00
		" 27.....	5,000 00
		" 29.....	5,000 00
		May 2.....	5,000 00
		" 5.....	5,000 00
		" 6.....	5,000 00
		" 8.....	10,000 00
		" 9.....	5,000 00
		" 12.....	5,000 00
		" 13.....	5,000 00
		" 16.....	5,000 00
		" 20.....	5,000 00
		" 25.....	5,000 00
		" 26.....	5,000 00
		" 27.....	5,000 00
		June 3.....	5,000 00
		" 3.....	5,000 00
		" 9.....	5,000 00
		" 12.....	5,000 00
		" 13.....	10,000 00
		" 23.....	5,000 00
		" 29.....	5,000 00
		Aug. 19.....	5,000 00
		" 24.....	5,000 00
		Oct. 14.....	5,000 00
		" 24.....	5,000 00
		Nov. 14.....	5,000 00
		1892.	
		Jan. 19.....	5,000 00
		Ap'l 7.....	5,000 00
Total.....	$730,000 00	Total.....	$730,000 00

113

"EXHIBIT No. 6."

Copy of Record of Debtor Balances of the Keystone National Bank to the Clearing-house from Nov. 30th, 1890, to March 20th, 1891, Inclusive.

Date.	Amounts.	Date.	Amounts.
1890.		1891.	
Dec. 1	95,672 46	Jan. 19	62,330 22
" 2	270,390 80	" 20	67,227 06
" 3	102,297 51	" 21	45,236 65
" 4	42,262 54	" 22	64,015 93
" 6	3,388 26	" 23	98,571 26
" 8	20,195 98	" 24	53,410 39
" 9	14,112 72	" 26	67,065 66
" 11	43,507 83	" 27	75,300 81
" 12	29,963 61	" 28	82,999 70
" 13	32,296 23	" 29	72,737 09
" 15	27,668 22	" 31	9,985 51
" 16	25,911 15	Feb. 2	18,389 80
" 17	42,276 07	" 3	8,736 55
" 19	9,279 28	" 5	38,424 46
" 20	19,243 88	" 9	17,765 69
" 22	11,392 04	" 13	58,915 46
" 23	60,300 37	" 14	41,019 66
" 26	27,522 21	" 17	10,792 31
" 27	35,744 64	" 18	39,339 13
" 29	847 07	" 21	20,337 32
" 30	41,488 47	" 25	37,973 87
" 31	46,425 83	" 26	67,210 88
1891.		Mar. 2	31,110 49
Jan. 2	70,430 15	" 4	19,912 27
" 3	50,622 18	" 5	44,217 40
" 5	36,753 17	" 7	15,945 81
" 6	29,660 62	" 9	45,625 71
" 7	58,409 86	" 10	70,113 17
" 8	31,534 68	" 11	100,007 69
" 9	56,058 73	" 12	50,481 52
" 10	32,579 49	" 13	45,933 49
" 12	80,921 51	" 14	8,178 79
" 13	109,454 97	" 16	52,915 87
" 14	71,820 92	" 17	92,270 24
" 15	33,937 25	" 18	9,873 10
" 16	58,133 92	" 19	75,359 08
" 17	43,854 31	" 20	47,029 75

114 "EXHIBIT No. 7."

Keystone National bank.

Account of Payment of Loan Certificates Issued by Clearing House Committee to Keystone National Bank.

DR.

Balance on hand 3/20/91	$713 40
Cash credit	28,808 10
Traction bonds	94,000 00
Note—Wood	700 00
Bills receivable—collected	228,632 55
	$352,854 05

CR.

Loan certificates—cancelled	$335,000 00
Interest paid on same	3,910 81
Protest fees	266 10
Legal expenses, court and sheriff's costs, and expenses of collection	3,981 52
Balance on hand	9,695 62
	$352,854 05

115 "EXHIBIT No. 8."

Capital, $1,000,000; surplus, $500,000.

George Philler, president; Morton McMichael Sr., cashier; Kenton Warne, assistant cashier.

FIRST NATIONAL BANK,
PHILADELPHIA, *M'ch* 24, 1891.

MY DEAR SIR: Will you please send by bearer the receipt of the manager of the clearing-house for $100,000 Balt. Traction bonds? We have sold them and will cancel loan certificates with the proceeds.

Your attention will oblige, yours truly,

G. PHILLER.

Hon. W. P. Drew.

116 "EXHIBIT No. 9."

PHILADELPHIA CLEARING-HOUSE,
427 CHESTNUT STREET, *March* 25, 1891.

Received of W. P. Drew, nat. bank examiner in charge of the Keystone Nat. bank, note of M. R. Wood, dated August 15, 1889, for seven hundred dollars.

$700. JNO. C. BOYD, *Manager*.

117 "EXHIBIT No. 10."

Interest on Clearing-house Loan Certificates of Keystone National Bank from March 1, 1891, to February 1, 1892.

1891.		
April 1	$1,565 00	
May 1	835 83	
June 1	524 17	
July 1	255 83	
Aug. 1	180 83	
Sept. 1	163 33	
Oct. 1	125 00	
Nov 1	107 50	
Dec. 1	60 83	
1892.		
Jan. 1	51 66	
Feb'y 1	40 83	
		$3,910 81

118 "EXHIBIT No. 11."

(Referred to in evidence as A. T. T. No. 1.)

(Receipt of March 20, 1891, by banks to Keystone National bank for packages containing $70,005.46.)

From the Keystone National bank.

Receipts for Packages—Clerk's Package Statement, 3, 19, 1891.

No.	Banks.	Amount sent.	Received by—
1	Philadelphia	$122 99	Duffy.
2	North America	1,450 45	Brearley.
3	Farmers' and Mechanics'	4,181 96	Birch.
4	Commercial.		
5	Mechanics'	184 05	Pyle.
6	Northern Liberties	592 48	Field.
7	Southwark	590 52	Donohue.
8	Kensington	1,821 51	Williams.
9	Penn	2,207 64	Sharp.
10	Western	916 51	Brearley.
11	Manufacturers'	753 30	Pratt.
12	Commerce	30 00	Altemus.
13	Girard	11,717 05	Heacock.
14	Tradesmen's	1,778 41	Way.
15	Consolidation	269 57	Dunlap.
16	City	184 39	Sexton.
17	Commonwealth	4,666 48	Trenwith.
18	Corn Exchange	3,971 23	Read.
19	Union	159 67	Watson.
20	First	4,679 51	Delaney.
21	Third	919 55	Stickney.
23	Sixth	1,151 11	Salter.
24	Seventh	125 32	Balderson.
25	Eighth	851 75	Tomlin.
26	Central	5,965 22	McGeorge.
27	Republic	1,070 50	Lutz.
28	Security	881 38	Rihl.
29	Centennial	364 81	Crulley.
30	Merchants'	1,200 89	McGeorge.
31	Keystone.		
32	Independence	180 91	Heller.
33	Ninth	1,822 18	Walters.
34	Tenth	990 93	Jacok.
35	Spring Garden	3,110 13	Ludwig.
36	Northwestern	1,799 96	Doyle.
37	Southwestern	2,835 47	Chase.
38	Produce.		
39	Fourth Street	3,728 77	McKinley.
40	Market Street	540 93	Troper.
41	Chestnut Street	1,631 57	Biles.
42	Quaker City	250 00	Carpenter.
43	Northern	306 36	Boyer.
		$70,005 46	

119 "EXHIBIT No. 12."

(Referred to in testimony as A. T. F. No. 2.)

(Form of Dr. and Cr. slip presented by banks to manager clearing-house from which clearing-house record is made up.)

No. 31.

THE KEYSTONE NATIONAL BANK.

DR.					CR.
		Balance.			

120 "EXHIBIT No. 14."

Keystone Bank Settling Sheet,

(Being receipt, March 20, 1891, from Keystone bank to other banks for packages amounting to $117,035.21.)

Philadelphia clearing-house.

No. 31—The Keystone National Bank Settlement, 3, 20, 1891.

Debtor banks.	Total debits.	Amount received.	No.	Banks.	Total credits.	Creditor banks.
52	906	24,547 84	1	Philadelphia	853	
104	333	356 92	2	North America	229	
	522	30,042 91	3	Farmers' & Mechanics'	579	57
6	100	272	4	Commercial	93	
2	52	23 06	5	Mechanics'	49	
49	117	43 20	6	Northern Liberties	68	
	16		7	Southwark	30	13
	35	566 52	8	Kensington	57	21
	116	1,340 07	9	Penn	140	23
50	151	226 45	10	Western	101	
13	59	50 27	11	Manufacturers'	45	
	36		12	Commerce	44	8
	507	3,660 61	13	Girard	636	129
	117	100	14	Tradesmen's	149	32
	56	1,000	15	Consolidation	94	38
	23	25 10	16	City	27	3
	24	500	17	Commonwealth	31	6
4	189	5,960 99	18	Corn Exchange	185	
	83	3,077 78	19	Union	92	9
92	915	2,517 63	20	First	822	
	39	8,038 51	21	Third	49	9
11	40	1,111 53	23	Sixth	28	
8	80	1,933 28	24	Seventh	71	
20	86		25	Eighth	66	
	288	1,114 95	26	Central	480	192
56	190	124 85	27	Republic	133	
18	74	9 66	28	Security	55	
	37	306 08	29	Centennial	95	57
	103	6,949 84	30	Merchants'	168	65
47	117		31	Keystone	70	
82	138	9,153 30	32	Independence	55	
	39	379 03	33	Ninth	40	1
20	30	176	34	Tenth	10	
9	47	961 75	35	Spring Garden	38	
10	37	3,275 64	36	Northwestern	27	
	16	168 60	37	Southwestern	31	15
	20	39 99	38	Produce	32	11
126	488	3,862 94	39	Fourth Street	361	
	49	614 75	40	Market Street	160	111
5	94	4,381 92	41	Chestnut Street	89	
20	26	121 24	42	Quaker City	16	
5	19		43	Northern	14	
808	6,434	117,035 21		aggregate.		
		70,005 46				
		47,029 75		balance.		

121 "EXHIBIT No. 15."

(Referred to in testimony as A. T. F. No. 5.)

(Receipt, Dec. 30, 1890, of Keystone bank for collaterals held at clearing-house on account of daily balance settlements.)

KEYSTONE NATIONAL BANK.

June 15th, 1880. $70,000.

Date of deposit.	Par value of collaterals.	Description of collaterals.	Date of withdrawal.	Receipts for collateral.
1890.				
Oct. 7	$25,509 80	Bills receivable...	12/30/90	J. G. Divine.
21	23,113 33	do. ...	12/30/90	J. G. Divine.
21	20,560 66	do. ...	12/30/90	J. G. Divine.
Nov. 18	37,929 69	do. ...	12/30/90	J. G. Divine.
Dec. 2	100,000 00	do. ...	12/30/90	J. G. Divine.
6	6,994 60	do. ...	12/30/90	J. G. Divine.
24	12,300 00	do. ...	12/30/90	J. G. Divine.
26	11,970 43	do. ...	12/30/90	J. G. Divine.
26	25,768 92	do. ...	12/30/90	J. G. Divine.
26	13,800 00	do. ...	12/30/90	J. G. Divine.

122 "EXHIBIT No. 16."

Keystone National bank.

Credit Daily Balances from November 20, 1890, *to March* 20, 1891.

1890.	
Nov. 30	$1,182 00
Dec. 5	17,161 60
" 10	2,250 01
" 18	2,678 06
" 24	21,167 78
1891.	
Jan'y 30	25,757 75
Feb'y 4	104,518 79
" 6	7,871 14
" 7	37,987 00
" 10	10,347 07
" 11	2,806 55
" 12	3,855 07
" 16	49,487 17
" 19	16,013 27
" 20	34,894 81
" 24	10,501 69

1891.		
Feb'y	27	$12,035 92
"	28	22,520 60
Mar.	3	78,835 47
"	6	27,664 62
	Total	$489,536 37

123 "EXHIBIT No. 17."

(*Receipt by Clearing House Committee to Keystone Bank for Baltimore Traction Co. Bonds.*)

PHILADELPHIA, *December* 2, 1890.

Received from Keystone National bank securities amounting to one hundred thousand dollars which that bank has hypothecated with the Clearing House committee in conformity with the terms of the agreement entered into by the banks of this city, on the 24th September, 1873, as amended October 18th, 1873.

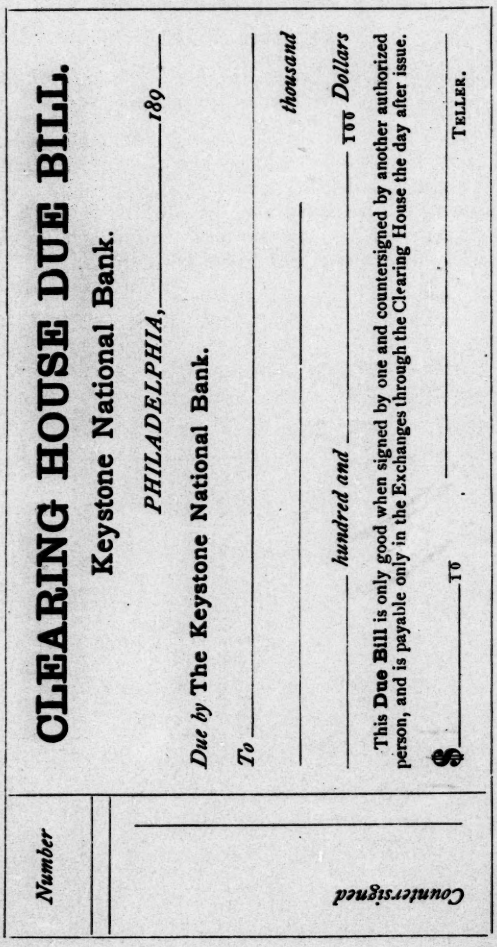
JNO. C. BOYD,
For the Committee.

Statement of the Securities.

$100,000—Baltimore Traction Company 5% coupon bond.

124 "EXHIBIT No. 18."

Form of Due Bill from Banks to Banks.



CLEARING HOUSE DUE BILL.

Keystone National Bank.

PHILADELPHIA, _____ *189*__

Due by The Keystone National Bank.

To _____

_____ *thousand*

_____ *hundred and* _____ 100 *Dollars*

This **Due Bill** is only good when signed by one and countersigned by another authorized person, and is payable only in the Exchanges through the Clearing House the day after issue.

_____ TO _____

TELLER.

Number

Countersigned

125 "EXHIBIT No. 19."

(Referred to in testimony as A. T. F. No. 9.)

(Receipt, March 19, 1891, by banks to Keystone bank for packages received by banks at morning settlement.)

No. 31—From the Keystone National bank.

Receipts for Packages—Clerk's Package Statement, 3, 18, 1891.

No.	Banks.	Amount sent.	Received by—
1	Philadelphia	$12,154 80	Duffy.
2	North America	4,193 71	Brearley.
3	Farmers' and Mechanics'	3,317 55	Birch.
4	Commercial.		
5	Mechanics'	1,006 57	Pyle.
6	Northern Liberties	118 00	Field.
7	Southwark	3,872 51	Donohoe.
8	Kensington	2,333 50	
9	Penn	6,371 84	Sully.
10	Western	6,901 60	Brearley.
11	Manufacturers'	6,336 63	Pratt.
12	Commerce	266 98	Altemus.
13	Girard	5,037 92	Heacock.
14	Tradesmen's	10,253 67	Meley.
15	Consolidation	226 58	Dunlap.
16	City	594 25	Sexton.
17	Commonwealth	1,313 26	Trenwith.
18	Corn Exchange	6,650 89	Read.
19	Union	8,813 62	Watson.
20	First	3,493 83	Delaney.
21	Third	1,100 84	Stickney.
23	Sixth	3,853 06	
24	Seventh	3,245 70	Balderson.
25	Eighth	246 05	Gieble.
26	Central	8,225 43	McGeorge.
27	Republic	34 45	Lutz.
28	Secur-y	5,022 29	Rihl.
29	Centennial	224 63	Crulley.
30	Merchants'	3,685 23	McGeorge.
31	Keystone.		
32	Independence	63 80	Heller.
33	Ninth	4,612 76	Walters.
34	Tenth	324 13	Jacok.
35	Spring Garden	2,836 88	Ludwig.
36	Northwestern	3,186 50	Doyle.
37	Southwestern	2,851 52	Chase.
38	Produce	4,026 25	Storr.
39	Fourth Street	10,102 33	McKinley.
40	Market Street	5,598 35	Troper.
41	Chestnut Street	4,903 88	Biles.
42	Quaker City	5,635 37	Gill.
43	Northern	2,099 25	Boyer.
		$155,136 41	

126 "EXHIBIT No. 20."

(Referred to in testimony as A. T. F. No. 10.)

(Receipt, March 19, 1891, by banks to Keystone bank for packages received by banks at runners' exchange.)

Philadelphia clearing-house.

Runners' Exchange, Keystone Settlement, 3, 19, 1891.

Amount received. Dr.	No.	Banks.	Amount delivered. Cr.	
2,557 32	1	Philadelphia	328 39	Rume.
3,319 46	2	North America.		
2,147 68	3	Farmers' & Mech	2,269 18	E. W. Gymph.
816 27	4	Commercial.		
317 53	5	Mechanics'	436 26	Pyle.
42 08	6	Nor. Liberties.		
	7	Southwark.		
	8	Kensington.		
134 40	9	Penn.		
235 25	10	Western	1,129 21	Howell.
700 00	11	Manufacturers'.		
30 60	12	Commerce.		
392 26	13	Girard	1,496 17	Heacock.
214 66	14	Tradesmen's	207 96	Way.
8 00	15	Consolidation.		
50 76	16	City.		
	17	Commonwealth.		
1,143 06	18	Corn Exchange.		
32 20	19	Union.		
4,546 82	20	First	381 40	Ghriskey.
2,254 57	21	Third	501 90	Stickney.
28 15	23	Sixth.		
33 00	24	Seventh.		
6 27	25	Eighth.		
3,033 16	26	Central.		
	27	Republic.		
	28	Security.		
42 13	29	Centennial.		
1,122 20	30	Merchants'	10 00	Joe.
	31	Keystone.		
2,215 00	32	Independence.		
	33	Ninth.		
	34	Tenth.		
	35	Spring Garden	76 16	Ludwig.
5 60	36	Northwestern.		
20 00	37	Southwestern.		
	38	Produce.		
4,497 20	39	Fourth street	187 55	McKinley.
	40	Market street.		
109 99	41	Chestnut Street.		
	42	Quaker City.		
	43	Northern.		
	44			
	45			
	46			
30,055 62		Total	7,024 18	
7,024 18				
23,031 44	balance.			
30,055 62				

127 "EXHIBIT No. 21."

(Referred to in testimony as A. T. F. No. 11.)

(Keystone bank settling sheet, being receipt, March 19, 1891, from Keystone bank to other banks for packages exchanged.)

Philadelphia clearing-house.

No. 31—*The Keystone National Bank Settlement*, 3, 19, 1891.

Debtor banks.	Total debits.	Amount received.	No.	Banks.	Total credits.	Creditor banks.
	1,133	24,239 98	1	Philadelphia	1,215	82
	310	.....	2	North America	525	215
	515	153,958 77	3	Farmers' & Mechanics'	669	154
67	241	356 57	4	Commercial	174	
23	121	.....	5	Mechanics'	98	
9	137	601 95	6	Northern Liberties	127	
21	57	....	7	Southwark	36	
	50	193 25	8	Kensington	56	6
	183	2,625 86	9	Penn	213	29
	184	171 71	10	Western	314	130
	80	366 87	11	Manufacturers'	120	39
	11	15	12	Commerce	28	17
124	730	2,595 41	13	Girard	605	
168	304	50 39	14	Tradesmen's	135	
	37	112 84	15	Consolidation	76	38
	38	3,314 60	16	City	39	1
	19	1,289 56	17	Commonwealth	26	7
	114	169 70	18	Corn Exchange	136	21
1	91	144 67	19	Union	91	
158	711	4,472 40	20	First	553	
43	114	11,589 09	21	Third	71	
9	39	.....	23	Sixth	29	
9	82	135 11	24	Seventh	72	
26	100	566 00	25	Eighth	73	
21	600	1,424 36	26	Central	579	
	140	2,029 51	27	Republic	226	85
29	84	152 88	28	Security	54	
55	110	50 00	29	Centennial	55	
24	219	1,159 75	30	Merchants'	195	
75	230	.....	31	Keystone	155	
	154	4,000 00	32	Independence	201	47
	56	.....	33	Ninth	97	41
18	52	592 83	34	Tenth	34	
	56	1,427 33	35	Spring Garden	57	1
	41	25 00	36	Northwestern	45	4
25	40	352 14	37	Southwestern	15	
11	43	.....	38	Produce	31	
	449	1,516 33	39	Fourth Street	467	17
31	107	1,070 64	40	Market Street	76	
	113	9,719 99	41	Chestnut Street	149	35
20	39	5 00	42	Quaker City	18	
2	26	....	43	Northern	24	
976	8,010	$230,495 49		aggregate.		
		155,136 41				
		$75,359 08		balance.		

128 "EXHIBIT No. 22."

(*Resolution Authorizing Issuing of Loan Certificates to Banks.*)

Agreement of September 24, 1873, as amended October 18, 1873.

For the purpose of enabling the banks, members of the Philadelphia Clearing House Association, to afford proper assistance to the mercantile and manufacturing community, and also to facilitate the interbank settlements resulting from their daily exchanges, we, the undersigned, do bind ourselves by the following agreement on the part of our respective banks, viz:

First. That the Clearing House committee be, and they are hereby, authorized to issue to any bank, member of the association, loan certificates bearing six per cent. interest on the deposits of bills receivable and other securities to such an *an* amount and to such percentage thereof as may in their judgment be advisable.

These certificates may be used in settlement of balances at the clearing-house, and they shall be received by creditor banks in the same proportion that they bear to the aggregate amount of the debtor balances paid at the clearing-house. The interest that
129 may accrue upon these certificates shall be apportioned monthly among the banks which shall have held them during that time.

Second. The securities deposited with the said committee shall be held by them in trust as a special deposit, pledged for the redemption of the certificates issued thereupon, the same being accepted by the committee as collateral security, with the express condition that neither the Clearing House Association, the Clearing House committee, nor any member thereof, shall be responsible for any loss on said collaterals arising from failure to make demand and protest, or from any other neglect or omission, other than the refusal to take some reasonable step which the said depositing bank may have previously required in writing.

Third. On the surrender of such certificates, or any of them, by the depositing bank, the committee will indorse the amount as a payment on the obligation of said bank held by them, and will surrender a proportionate amount of securities, except in case of default of the bank in any of its transactions through the clearing-house; in which case the securities will be applied by the committee, first to the payment of outstanding certificates, with interest; next, to the liquidation of any indebtedness of such bank to the other banks, members of the Clearing House Association.

Fourth. The committee shall be authorized to exchange any portion of said securities for others, to be approved by them, and shall have power to demand additional security, at their own discretion.

130 Fifth. That the Clearing House committee be authorized to carry into full effect this agreement, with power to establish such rules and regulations for the practical working thereof as they may deem necessary; and any loss caused by the non-payment of

loan certificates shall be assessed by the committee upon all the banks in the ratio of capital.

Sixth. The expenses incurred in carrying out this agreement shall be assessed upon the banks in equal proportion to their respective capital.

Seventh. That the Clearing House committee be and they are hereby authorized, to terminate this agreement upon giving thirty days' notice thereof, at any stated meeting of the Clearing House Association.

PHILADELPHIA, *November* 18, 1890.

At a meeting of the Clearing House committee, held this day, it was, on motion:

Resolved, That in accordance with resolutions of September 24, 1873, as amended October 18, 1873, the Clearing House committee will issue loan certificates to banks applying, and receive them in payment of balances.

JOHN C. BOYD, *Manager.*

131 "EXHIBIT No. 23."

3557.

Capital, $1,500,000.

THE FOURTH STREET NATIONAL BANK,
PHILADELPHIA, 2 P. M., *Nov.* 29, 1890.

DEAR MR. BOYD: There is no truth in report of trouble at the Keystone. Nothing there more than usual.

Yours very truly, W. P. DREW,
N. B. Exam.

There are rumors flying round in regard to the bank, and I thought I would report facts to you.

132 "EXHIBIT No. 24."

Agreement of Counsel.

And now, March 18, 1893, it is agreed between the counsel in this case that there are now pending and undetermined in the court of common pleas No. 4, of Philadelphia county, two actions against the Clearing House committee, viz: one of them brought by Crane, Parris & Co. to recover from defendants the amount of a draft for $1,900, alleged to have been drawn by Crane, Parris & Co. on the Fourth Street National Bank of Philadelphia, and to have been sent to and received by the Keystone National bank for collection on March 20th, 1891; and the other of said actions being brought by the Second National bank in New York to recover from defendants the amount of several drafts, to wit, one alleged to have been drawn by C. T. Mullin on the Philadelphia National bank for $328.39; one alleged to have been drawn by Caldwell & Co. on the Tradesmen's National bank for $176.96; one alleged to have been drawn by G.

Bradenburg & Co. on the Third National bank for $500; one alleged to have been drawn by G. B. Sennett on the Commonwealth National bank for $245.46; one alleged to have been drawn by J. Sichel on the Market Street National bank for $100.50; one alleged to have been drawn by C. F. Thomas on the Spring Garden National bank for $200.00; one alleged to have been drawn by E. H. Fitler on the National Bank of the Northern Liberties for $424.12; and one
133 alleged to have been drawn by Strawbridge & Clothier on the Farmers' and Mechanics' National bank for $1,685.84; and all alleged to have been sent to and received by the Keystone National bank for collection on March 19th or 20th, 1891; in which said actions as above set forth, the plaintiffs severally seek to recover from the said defendants the aggregate sum of $5,561.27, with interest from March 20th, 1891, being the proceeds of certain drafts and checks forming part of the sum of $70,005.46, of which said drafts and checks the said Crane, Parris & Co., and the Second National Bank of New York respectively claim to be the owners.

Said Crane, Parris & Co. and the said Second National bank have also commenced suit by bill in equity in the circuit court of the United States for the same alleged causes of action against the plaintiff herein, which said suits are still pending and undetermined.

READ & PETITT,
For Plaintiff.
A. T. FREEDLEY,
For Defendants.

134 *Constitution and Rules and Regulations of the Clearing House Association of the Banks of Philadelphia.*

Revised to July 7th, 1891.

Organized January 25th, 1858.

With Pennsylvania Holiday and Half-holiday Law in Appendix.

Philadelphia:
1891.

135 MEMBERS.

Forty National Banks, with Association Numbers.

July, 1891.

1. The Philadelphia National bank.
2. The Bank of North America.
3. The Farmers' and Mechanics' National Bank of Philadelphia.
4. The Commercial National Bank of Pennsylvania.
5. The Mechanics' National Bank of Philadelphia.
6. The National Bank of the Northern Liberties.
7. The Southwark National Bank of Philadelphia.
8. The Kensington National Bank of Philadelphia.
9. The Penn National Bank of Philadelphia.
10. The Western National Bank of Philadelphia.

11. The Manufacturers' National Bank of Philadelphia.
12. The National Bank of Commerce of Philadelphia.
13. The Girard National Bank of Philadelphia.
14. The Tradesmen's National Bank of Philadelphia.
15. The Consolidation National Bank of Philadelphia.
16. The City National Bank of Philadelphia.
17. The Commonwealth National Bank of Philadelphia.
18. The Corn Exchange National Bank of Philadelphia.
19. The Union National Bank of Philadelphia.
20. The First National Bank of Philadelphia.
21. The Third National Bank of Philadelphia.
23. The Sixth National Bank of Philadelphia.
24. The Seventh National Bank of Philadelphia.
25. The Eighth National Bank of Philadelphia.
26. The Central National Bank of Philadelphia.
27. The National Bank of the Republic of Philadelphia.
28. The National Security Bank of Philadelphia.
29. The Centennial National Bank of Philadelphia.
30. The Merchants' National Bank of Philadelphia.
32. The Independence National Bank of Philadelphia.
33. The Ninth National Bank of Philadelphia.
34. The Tenth National Bank of Philadelphia.
36. The Northwestern National Bank of Philadelphia.
37. The Southwestern National Bank of Philadelphia.
38. The Produce National Bank of Philadelphia.
39. The Fourth Street National Bank of Philadelphia.
40. The Market Street National Bank of Philadelphia.
41. The Chestnut Street National Bank of Philadelphia.
42. The Quaker City National Bank of Philadelphia.
43. The Northern National Bank of Philadelphia.

136 *Officers and Committees.*

1891.

President, James V. Watson, president of the Consolidation National bank.

Secretary, William H. Rhawn, president of the National Bank of the Republic.

Clearing House committee.

Chairman, Benjamin B. Comegys, president Philadelphia National bank.

George Philler, president First National bank.

Jacob Naylor, president Eighth National bank.

John H. Michener, president Bank of North America.

George M. Troutman, president Central National bank.

Henry C. Stroup, cashier Farmers' and Mechanics' National bank.

James V. Watson, president Consolidation National bank, *ex officio*.

Committee of arbitration.

Chairman, Daniel B. Cummins, president Girard National bank.
Francis P. Steel, president Southwark National bank.
John Rommel, Jr., president Mechanics' National bank.
Samuel S. Sharp, president Penn National bank.
Cornelius N. Weygandt, president Western National bank.
Joseph Moore, Jr., president National Bank of the Northern Liberties.

Clearing-house depository, the Farmers' and Mechanics' National bank.

Manager, John C. Boyd.

137 *Constitution.*

Name.

Article 1. The title of this association shall be the Clearing House Association of the Banks of Philadelphia.

Object, the effecting of the exchanges and paying balances.

Art. 2. Its object shall be to effect at one place the daily exchanges between the several associated banks, consisting of a morning exchange and a runners' exchange, and the payment, at the same place, of the balances resulting from such exchanges. The responsibility of the association for such exchanges is strictly limited to the faithful distribution by the manager, among the creditor banks for the time being, of the sums actually received by him; and should any losses occur while the said balances are in the custody of the manager, they shall be borne and paid by the associated banks, in the same proportion as the expenses of the clearing-house, as hereinafter provided for.

Responsibility limited to distribution of sums received.

Losses, how borne.

Representation of banks at meetings.

Art. 3. Each bank belonging to the association may be represented, at all meetings thereof,
138 by the president, vice-president, or cashier, or by such other person as the board of directors shall appoint.

Officers, elected by ballot in January.

The officers of the association shall be a president and secretary, who shall be elected by ballot, at the stated meeting in January, annually.

President, *ex officio* member of committees.

The president shall preside at all meetings of the association, and be *ex officio* a member of the standing committees.

Secretary to keep minutes.

It shall be the duty of the secretary to keep correct minutes of the proceedings of the association in a book provided for the purpose.

Absence of officers.

In case of the absence of the president or secretary, from any meeting, a president or secretary *pro tem.* shall be appointed.

Quorum, majority of whole.

Art. 4. At all the meetings of the association a quorum for the transaction of business shall consist of a majority of the whole number of associated banks.

Stated meetings, first Monday in month.

Special meetings, purpose to be stated.

Suspension of stated meetings.

Notice of meetings.

The stated meetings of the association shall be held on the first Monday in every month, and special meetings shall be called by the president whenever he may deem it necessary, or whenever requested in writing by five members of the association. The purpose for which the meeting is called shall be stated in the call. The association may suspend any stated meeting. Due notice of all meetings shall be given by the secretary.

Committees elected by ballot in January.

139 Art. 5. At the stated meeting in the month of January, annually, a standing committee of six bank officers shall be elected by the majority, and by ballot, to be called the Clearing House committee, whose duty it shall be to procure, from time to time, a suitable room or rooms for the clearing-house; to provide proper books, stationery, furniture, fuel, and whatever else may be necessary for the convenient transaction of business thereat; to appoint a manager annually; to establish rules and regulations to be observed at the clearing-house, in cases not provided for in these articles, subject to the approval of the association; and generally to supervise the clearing-house affairs. This committee shall have charge of the funds belonging to the association, shall draw on each bank for its quota of expenses, and shall, at the stated meetings in April and October, submit detailed accounts of expenditures, and estimates of what may be required for the clearing-house the ensuing half year.

Clearing House committee, duties of.

Rooms and supplies provided.

Manager appointed annually.

Rules at clearing-house.

Funds of association.

Expenses, how paid.

Accounts and estimates, April and October.

Collateral securities held and exchanged.

This committee shall take into their separate custody the collateral securities required to be deposited with them by the banks, members of the association, under the provisions of article 17, and receipt therefor, and for any exchange of such collateral securities.

Manager may be removed.

Art. 6. The Clearing House committee shall have power to remove the manager, whenever, in their opinion, the interests of the

140 association shall require it; and in the event of a removal, shall report the same immediately to the Clearing House Association. They shall have power, also, to employ one or more clerks, and such temporary aid or assistance as they may, from time to time, think necessary, at the clearing-house, and to fix their salaries.

Removal, report same immediately.

Clerks may be employed and salaries fixed.

Examination of books and accounts of members.

Accountants may be employed.

They shall have power to examine the books and accounts of any member of this association whenever they shall deem it necessary and to employ accountants to aid in such examination.

Suspension of members by committee.

And they shall have power, in case of extreme emergency, to suspend any bank from the privileges of the clearing-house until the pleasure of the association thereupon shall be ascertained. But no such suspension shall take place unless a

Majority to be present.

majority, at least, of the committee shall be present at the ordering thereof, nor unless the vote be

Unanimous vote required.

unanimous: Provided, that no member of the

Member may not vote on own case.

committee shall vote upon any question involving the suspension of the bank represented by him in the association. In case of such suspension, the Clearing House committee shall forth-

Association to be convened forthwith.

with call a meeting of the association to take the matter into consideration.

Manager's salary.

Art. 7. The salary of the manager shall

Manager's bond, $20,000.

141 be fixed by the association. The manager shall give a bond, with sureties, in the sum of twenty thousand dollars ($20,000), to be approved by the Clearing House committee.

Clerks to give bonds.

All clerks, except temporary assistants, shall give bond, with sureties to be approved by the committee, in such sums as the committee shall determine.

Manager, control and duties of.

Art. 8. The manager, under control of the Clearing House committee, shall have immediate charge of all business at the clearing-house, so far as it relates to the manner in which it shall be

Clerks and porters, supervision of.

transacted, including the supervision of the settling and package clerks and porters of the several associated banks, who, while at the clearing-house, shall be under his direction.

Manager to decide questions of practice.

And his decisions concerning all questions of practice and details at the clearings shall rule until modified or reversed by the Clearing House

Fines imposed.

committee. He shall impartially impose and collect the fines fixed by the rules of the clearing-house.

Morning exchange, hour of.

Art. 9. The hour for making the morning exchange at the clearing-house shall be at eight and a half o'clock a. m., precisely. Between the hours of eleven and twelve o'clock the debtor banks

Balances paid to manager.

shall pay to the manager, at the clearing-house,

Certificates authorized.

the balances against them, in such certifi-

142 cates as are or may be, from time to time, authorized by the Clearing House Association, or in the certificates hereinafter mentioned,

Due bills for fractional sums.

except fractional amounts, which shall be paid in clearing-house due bills. At twelve and a half

Balances received from manager.

o'clock, the creditor banks shall receive from the manager, at the same place, the respective bal-

ances due to them, provided the balances due from the debtor banks shall then have been paid.

Runners' exchange, hour of.

The hour for making the runners' exchange at the clearing-house shall be eleven and a half o'clock a. m., precisely. The payment of the balances arising from the settlement of the runners' exchange shall be made in such manner as the Clearing House committee may direct, subject to such modifications as this association may, from time to time, adopt.

Balances, how settled.

On Saturday half holidays.

Provided, that upon Saturdays made half holidays by law, balances shall be paid between ten and eleven o'clock, and received at eleven and a half o'clock; and the hour for making the runners' exchange shall be eleven o'clock.

Non or late exchanges, how made and settled.

Art. 10. Should any bank fail to appear at the clearing-house, or appear too late to be included in any exchange, such bank shall make its own exchange at the counters of the other banks,
143 settling in lawful money or by clearing-house due bills, at the option of the creditor banks.

Failure to pay balances, how settled.

Art. 11. Should any of the associated banks fail to appear at the clearing-house at the proper hour, prepared to pay the balance against it, the amount of that balance shall be immediately furnished to the clearing-house by the several banks exchanging at that establishment with the defaulting bank, in proportion to their respective balances against that bank, resulting from the exchanges of the day, and the manager shall make requisitions accordingly, so that the general settlement may be accomplished with as little delay as possible. The respective amounts so furnished the clearing-house on account of the defaulting bank will, of course, constitute claims on the part of the several responding banks against that bank.

Requisitions by manager.

Claims against defaulting bank.

Prior claim of depository bank.

Provided, that the amount of the due bill given by the defaulting bank, in settlement of its debit balance in the runners' exchange of the previous day, and deposited by the clearing-house in its depository bank, shall be deducted from the total charge of such bank, and shall be the first claim against the securities deposited by the defaulting bank, under article 17.

Errors, how adjusted.

Art. 12. Errors in the exchanges, and claims arising from the return of checks, or from
144 any other cause, are to be adjusted directly between the banks who are parties to them, and not through the clearing-house—the association being in no way responsible in respect to them.

Association not responsible.

Overs to be reported in case of errors.

In case of errors in the exchanges, arising from contra errors or similar causes, which cannot be traced to the bank or banks causing such errors, it shall be the duty of every bank settling over to report the same to the manager.

Gold coin deposited in safes of association.

Art. 13. The Clearing House Association of the Banks of Philadelphia shall receive on deposit, in special trust, such United States gold coin as any of the associated banks may choose to send to it for safekeeping, for clearing-house purposes; which coin shall be kept in the safe or safes belonging to the association, in the vault or vaults of the Farmers' and Mechanics' National Bank of Philadelphia.

In vaults.

Gold certificates, how issued and signed.

Certificates in exchange for such coin shall be issued to the depositing banks, in sums of five thousand dollars ($5,000); said certificates shall be signed by the manager of the Clearing House Association, or by his assistant, or other person designated by the association for the purpose, and shall be countersigned by the president, acting president, cashier, or assistant cashier of the Farmers' and Mechanics' National Bank of Philadelphia. Such certificates shall be negotiated only among the associated banks, and shall be received by them in payment of balances at the clearing-house. Such special deposits of coin are to be entirely voluntary—each bank being left perfectly free to make them or not, at its own discretion.

Countersigned.

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Certificates, how used and received.

Coin deposits voluntary.

Coin, property of banks holding certificates.

The coin thus placed in special deposit is to be the absolute property of such of the associated banks as shall, from time to time, be the holders of the certificates, and is to be held by the depository subject to withdrawal on presentation of the properly endorsed certificates, at any time during banking hours.

Coin may be drawn in banking hours.

Printing expenses borne equally,

Art. 14. The expenses of the clearing-house, not including the expense of printing for the several banks (which last-mentioned expense shall be apportioned equally), shall be borne and paid by the several banks belonging to the association, according to their respective capitals, as follows:

Expenses other than printing borne according to capitals.

Capitals under $500,000.

Banks having capitals of less than $500,000, shall pay $100 each, annually.

Capitals $500,000 and under $1,000,000.

Banks having capitals of $500,000, and less than $1,000,000, shall pay $200 each, annually.

Capitals $1,000,000 and over.

Banks having capitals of $1,000,000, and upwards, shall pay $300 each annually.

Proportion, if more is necessary.

And in the same proportion if more funds become necessary.

146 Art. 15. At the stated meeting in January, annually, a committee of six bank officers shall be elected, to be called "the committee of arbitration," whose duty it shall be to hear and determine all disputes between members of the association, which shall be submitted to them by either party thereto; such committee shall record a brief abstract of each case referred to them, with their decision on the same, in a book to be provided for that purpose, which book shall be kept at the clearing-house, open to the inspection of the members of the association.

Arbitration, committee of, elected by ballot, duty of.

Disputes to be submitted.

Record of cases and decisions open to members.

Art. 16. It shall be the duty of the Clearing House committee to examine, in such manner as they may deem necessary, the coin or United States legal-tender notes in the depository, and compare the same with the amount of certificates issued and unpaid, at least four times in each year, and report the result of such examination to the next meeting of the association.

Examination of coin and notes, and report thereon at least four times a year.

Art. 17. Each bank, member of the Clearing House Association, shall deposit securities with the Clearing House committee as collateral for their daily settlements, in the following percentage or assessment on capital:

Security for daily settlements.

1st. Banks with capitals of $800,000 and over, ten per cent.

Capitals $800,000 and over.

147 2d. Banks with capitals of $500,000 and under $800,000, fourteen per cent.; but not to be required to deposit over $80,000.

Capitals $500,000 and under $800,000.

3d. Banks with capitals over $250,000, and under $500,000, twenty per cent.; but not to be required to deposit over $70.000.

Capitals $250,000 and under $500,000.

4th. Banks with capitals of, and under $250,000, shall deposit not less than $50,000.

Capitals under $250,000.

The committee shall apply the deposit of any defaulting bank to the payment of the balance due by such bank at the clearing-house, or to the reimbursement, *pro rata*, of the several banks furnishing said balance, under article 11; and the surplus, if any, shall be held as collateral security for other indebtedness to members of this association.

Deposit of defaulting bank, application of.

Art. 18. These articles of association, and any amendments thereto, shall be submitted to the respective boards of directors of the several banks, members of this association, and when adopted by a majority of the whole number, shall be deemed and taken to be in full force and operation; a copy of the vote or resolution of the board

Constitution and amendments to be submitted to banks.

Assenting vote or resolution to be certified to secretary.

assenting to these articles of association, certified by the cashier, shall be deposited with the secretary of the association.

Membership, application for, to be made to Clearing House committee.

Art. 19. Applications for membership shall be made to the Clearing House committee,
148 and on a favorable report from that committee to a stated meeting of the association, such applicants may be admitted members of this association by paying an admission fee of ten thousand dollars ($10,000), and by certifying their assent to these articles in the same manner as the original members, but no new members shall be admitted except on a vote by ballot of three-fourths of those present.

May be admitted on favorable report.

Admission fee, $10,000.

Assent to constitution.

Vote required to admit.

Forfeiture of rights of membership.

Reinstatement, how obtained.

Penalty.

Any member ceasing to take part in the daily exchanges for a period of thirty days, shall forfeit all rights of membership, and may only be restored to the same on the vote, by ballot, of not less than three-fourths of the members present at a stated meeting, or a meeting called for the purpose, and upon the payment of such penalty as may then be imposed.

Rules and regulations, how adopted, amended, or repealed.

Art. 20. Rules and regulations not inconsistent with this constitution may be adopted, amended or repealed by the association, at any stated meeting, or a meeting called for the purpose.

Amendments, how made.

Amendments of these articles of association may be made at any stated meeting of the association, by the vote of a majority of all the members thereof, notice of the proposed amendment having been given at a previous stated meeting.

149 *Rules and Regulations Adopted by the Clearing House Association of the Banks of Philadelphia.*

Rule I.

Meeting hour.

Fine for non-representation.

The regular meetings of the association shall be held at twelve o'clock, noon. Each bank not represented at any meeting of the association shall be fined one dollar for each meeting at which it is unrepresented.

Rule II.

Morning exchange items.

The morning exchange shall be confined to items that were received on the day previous to the settlement.

Runners' exchange items.

The runners' exchange shall be confined to notes, acceptances, and checks payable on the day of the exchange.

Return items.

No return items, or items in dispute, shall be put into the packages, unless notice thereof be previously given.

Saturday half-holiday items.

Provided, that items payable upon Saturdays made half holidays by law, may be included in the morning exchange of such days; and any items not good or informal may be returned, without notice, in the runners' exchange of the same day.

Not good or informal.

Rule III.

Packages, wax-sealed and endorsed.

Sealed packages, well gummed and sealed with wax and endorsed with ink or indelible pencil, shall be used exclusively in the morning exchange and in the runners' exchange, and the amounts stated thereon shall be the basis of settlement. These packages with the seals unbroken, shall be delivered by the messengers of the several banks to their respective institutions; otherwise, no responsibility shall attach to the sender.

Basis of settlement

Seals unbroken.

No responsibility.

Rule IV.

Packages, when clerks not to receive.

No clerk at the clearing-house shall be allowed to receive the packages of the other banks until those of his own bank arrive for delivery.

Rule V.

Informal items, when and how returned.

Items received in the morning exchange, when not good or informal, may be returned to the bank from which they were received, at any time before twelve o'clock of the same day, or through the runners' exchange, after giving notice; but if returned mutilated or perforated, by having been put on the teller's file, they are to be received at the risk of the bank returning them, should the depositor or correspondent object to the mutilation.

Mutilations, risk of.

Invalidated morning exchange items, return of.

Should such return invalidate any items sent in the morning exchange by the bank making the claim, the bank refunding shall have the right to return such items before one o'clock the same day.

Claims based on payment of return items.

Should the bank upon which the claim is made have received, in the morning exchange, from any other bank, items based upon the payment of those so returned, such bank shall have the right to return them at any time before one o'clock, accompanied by a statement of the facts from the cashier or president of the bank making the claim.

Statement of facts required.

Runners' exchange items, return of.

Items received in the runners' exchange, when not good or informal, may be returned to the bank from which they were received at any time

Mutilated items, risk of.

before three o'clock of the same day; but if returned mutilated or perforated, by having been put on the teller's file, they are to be received at the risk of the bank returning them, should the depositor or correspondent object to the mutilation:

Privilege of certain banks in returning runners' exchange items.

Provided, that the Kensington National, the Third National, the Eighth National, the National Security, the Centennial National, the Ninth National, the Tenth National, the Northwestern National and Northern National banks shall have the privilege of returning items received
152 in the runners' exchange, at any time before three and a half o'clock same day, first

Notice by telegraph or telephone before 3 p. m.

giving notice by telegraph or telephone that such items would be returned; such notice to be served before three o'clock; and any other member of

Privilege of other banks.

the association shall have the same privilege in returning items to any of the banks above named.

Not good or missent, return of same day.

All checks, notes, drafts, or other items in the exchanges not good or missent, shall be returned the same day directly to the bank from which they were received; and in case of the refusal or

Refusal or inability to refund. Manager to adjust, if notified before twelve.

inability of any bank to promptly refund to the bank presenting such checks, drafts, or other items returned as not good or missent, the bank holding such checks, drafts, or other items may report to the manager the amount of the same; and it shall be his (the manager's) duty, with the approval of any two members of the Clearing House committee, to take from the settling sheet of both banks the amount so reported, and adjust the clearing-house statement accordingly: Provided, that such notice shall be given to the manager before twelve o'clock of the same day.

Return items on Saturday half holidays.

And further provided, that items due and received in the runners' exchange on Saturdays made half holidays by law, when not good or informal, may be returned in the next morning

Notice before 12.30 p.m.

exchange, after giving notice by telegraph
153 or telephone, to be served before twelve

Protest of items.

and a half o'clock, first duly protesting such items when so requested.

Rule VI.

Verification of morning exchange packages.

No sealed package received through the morning exchange at eight and a half o'clock a. m., shall be admitted by the bank receiving the same as correct without an opportunity of verification, and the amount charged on the envelope shall be

admitted as correct, unless the bank receiving the same shall report to the contrary by twelve o'clock, noon, of the same day.

Verification of runners' exchange packages.

No sealed package received through the runners' exchange at eleven and a half o'clock a. m., shall be admitted by the bank receiving the same as correct, without an opportunity of verification, and the amount charged on the envelope shall be admitted as correct, unless the bank receiving the same shall report to the contrary by two o'clock p. m., of the same day.

Rule VII.

Irregularities, notice of, to cashiers.

The chairman of the Clearing House committee is required to notify the cashiers of the several banks of any irregularities, omissions, or inattentions that may arise in the transaction of their business by their respective clerks at the clearing-house.

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Rule VIII.

Securities to be examined by banks.

It shall be the duty of each bank to examine, twice a year, or oftener, at its option, the securities in the custody of the Clearing House committee, deposited by it as collateral security, agreeably to the requirements of article 17; to compare the same with the receipt given by the committee, and, if found correct, to execute to the committee a certificate setting forth the different kinds and amounts thereof, and that the same are in the possession and custody of the committee at the date of such certificate. Such examination may be made by the president, vice-president, or cashier of such bank, or by a committee of directors duly appointed for the purpose.

Receipt to be given committee.

Who may examine securities.

Rule IX.

Certificates to be received by manager for balances.

The manager of the clearing-house is instructed to receive the certificates issued by the Assistant Treasurer of the United States for clearing-house purposes, under any act of Congress, and certificates for gold deposited in the clearing-house safes in the Farmers' and Mechanics' National bank, in settlement of, and payment for, balances due in the morning exchange; said Treasury certificates to be endorsed to the "Order only of a bank, member of the Clearing House Association of the Banks of Philadelphia."

Endorsement of certificates.

155 Rule X.

Fines to be imposed and collected by manager.

It shall be the duty of the manager to impose and collect the fines referred to in article 8 of the constitution, agreeable to the following

Scale.

Morning exchange.

Scale of fines, morning exchange.

Credit errors.

1st. All errors on the credit side of the settling clerk's statement (*i. e.*, in the amount brought), whether of entry or footing, and all errors causing disagreement between the credit entries and the exchange packages, each one dollar.

Debit errors.

2d. Failure of a clerk to discover errors in making the debit (*i. e.*, in the amount received), each one dollar.

Other errors.

3d. All other errors, each one dollar.

Disorder.

4th. Disorderly conduct of the clearing or package clerks, or porters, at the clearing-house, or disregard of the manager's instructions, each offense one dollar.

Lateness at exchange.

5th. Failure of any clerk or porter to attend punctually at the morning exchange at eight and a half o'clock a. m., each offense one dollar.

Lateness in paying balances.

6th. Debtor banks failing to appear to pay their balances by twelve o'clock noon, or on half holidays, by eleven o'clock a. m., each two dollars.

Unpaid fines.

156 When the fine is not paid at once by the clerk, a bill or memorandum of it shall be sent within twenty-four hours to the bank liable for it.

Runners' exchange.

Scale of fines, runners' exchange.

Credit errors.

1st. All errors on the credit side of the settling clerk's statement (*i. e.*, in the amount brought), whether of entry or footing, and all errors causing disagreement between the credit entries and the exchange packages, each fifty cents.

Debit errors.

2d. Failure of a clerk to discover errors in making the debit (*i. e.*, in the amount received), each fifty cents.

Other errors.

3d. All other errors, each fifty cents.

Disorder.

4th. Disorderly conduct of the clearing or package clerks, or porters, at the clearing-house, or disregard of the manager's instructions, each offense one dollar.

Lateness at exchange.

5th. Failure of any clerk or porter to attend punctually at the runners' exchange, at eleven

and a half o'clock a. m., or, on half holidays, at eleven o'clock a. m., each offense one dollar. Half holidays.

Rule XI.

Banks shall be required, when demanded, to give to other banks clearing-house due bills of such form as may be prescribed by this
157 body, in payment of items payable at their counters, when the amount exceeds one hundred dollars. Due bills, form of, and when to be given.

Rule XII.

Banks shall give notice to each other, and to the manager of the clearing-house, of the names and signatures of all persons (other than the president, vice-president, and cashier) who are authorized to sign or countersign clearing-house due bills. Signatures to due bills, notice of.

Rule XIII.

The associated banks shall report at once, to each other, the names of persons whose accounts they have closed on account of overdrawing, depositing worthless checks, or otherwise defrauding them. Fraudulent accounts to be reported.

The president or cashier of the bank from which such notice should come shall send, on the day on which the account is closed, to the president or cashier of the other banks (in the clearing-house package of the next morning), a sealed envelope containing a slip of paper, on which he has written the name and residence or place of business of the person whose account has been closed. Notice to be given other banks in sealed envelopes.

Rule XIV.

The statements required to be published in Philadelphia shall be inserted in the North American newspaper. Statements to be published in North American.

158 Rule XV.

The uniform statement of weekly averages shall be made up on every Monday morning, and shall exhibit the average of the various items for the previous week as they stood after the exchanges of each day were deducted from the gross figures of the previous day, at three o'clock p. m. Weekly averages every Monday morning.

New York, Boston, and Baltimore accounts.

To the foregoing weekly statements of averages shall be appended the state of the account of each bank with New York, Boston, and Baltimore, on the day the report is made up.

President or cashier to certify.

In making up these average statements, which are to be certified by the president or cashier,

Due bills, how accounted for.

clearing-house due bills issued are to be treated as debts due to other banks, and those received as debts due from other banks.

Certificates of deposit.

Certificates of deposit are to be included in the deposits.

Bankers' accounts.

Bankers whose accounts are embraced in the "state of the bank," are to be treated as banks.

Special coin deposits.

Special deposits of coin are not to be included in the specie.

Statement to manager by Monday noon, to publish and send to banks.

The statement shall be sent, by Monday noon, to the manager of the clearing-house, whose duty it shall be to make a tabular statement, embracing the reports from all the banks, and to
159 have it published on the following day; the manager to send to each bank four slip copies of the report.

Rule XVI.

Reclamations, how made.

Reclamations for items erroneously put in the exchanges shall be made in lawful money or by clearing-house due bills, at the option of the claimant.

Rule XVII.

Identification recommended.

Banks are recommended not to pay any items presented at their counters, except to some person known to the bank to be the proper person to receive payment therefor.

Rule XVIII.

Card and notice to be placed in bank books.

A printed card and notice shall be prepared and placed in all the bank books, giving such advice and suggestions to depositors, in reference to the transaction of business with the banks, as shall, without material inconvenience, measurably secure all parties from counterfeiting, forgery, and fraud, viz:

Card, form of.

Card.

You are requested to make your deposits in the bank as early in the day as you conveniently can.

It is recommended, for your safety and protec-

tion, that you have one particular person to do your business at the bank, who shall be competent to take charge of the money and papers you intrust to his care, and sufficiently intelligent to understand and properly deliver the messages and explanations you may have occasion to send.

Also—

160 That you write, or stamp, over your endorsement, upon all checks which you send to be deposited to your credit in bank, the words "for deposit to our credit," which will prevent their being used for any other purpose.

It is recommended, that you keep a regular check book and not suffer it to be seen or examined by those who have no right so to do—that you do not draw a check upon the bank except it be taken from your own check book—that you draw as few checks as possible—and that when you have several small sums to pay away you draw one check for the whole, and take such notes and coins as will enable you to distribute the amount among those you intend it for. Do not give your checks to strangers.

In case you should have a form of check engraved or printed for your own special use, it is recommended that you carefully keep the engraved plate in your own custody, and see that you obtain every impression of the check which is made from the plate or the types.

It is desired that all your checks for large amounts should be presented for payment by a person known to the paying teller or the officers of the bank.

It is particularly requested, in case you desire to preserve your cancelled checks, that you will immediately deface or mutilate your signatures, in such manner as will prevent their being copied; and that, afterwards, you will put the checks away so carefully that no one else can get possession of them.

☞ Attention to these recommendations and suggestions will go far to secure you and the bank from errors and losses.

Notice.

Notice, form of.

In conformity with the rules adopted by all the banks of this city, members of the Clearing House Association, you are hereby notified that you are held responsible as endorser for the non-payment of all checks upon other banks of this city, members of said association, deposited by you as cash

in this bank, until the close of the business day next succeeding that on which such checks are deposited. This bank receiving such
161 checks, only for collection on your account through the exchanges at the clearing-house. Upon all other checks and drafts deposited by you as cash, your responsibility as endorser continues until payment has been ascertained by this bank. All notes, drafts, checks, coupons or acceptances, discounted or received for collection or as cash, which are payable at points outside of this clearing-house, will be received upon this condition: that this bank is responsible only for good faith and due care in the selection of such other banks or agencies as are employed for the collection of such items.

Rule XIX.

Collaterals, when may be deposited or exchanged.

The Clearing House committee shall, from time to time, appoint the days and the hours on those days when deliveries or exchanges will be made of collateral securities deposited under the provisions of article 17 of the constitution, or for any other purpose.

Securities to be submitted to committee.

Securities other than United States, Pennsylvania State, and city of Philadelphia loans, must be submitted to the committee before an exchange can be permitted.

Bills receivable, rate at which received.

Bills receivable deposited as such security shall in no case be received at more than seventy-five per cent. of their par value.

Rule XX.

Checks, how certified as good.

All checks marked "good," or certified as good by any bank, member of the Clearing House Association, shall be so certified by the cashier, president, or vice-president, which certification shall be a sufficient acknowledgment of the liability of the bank from which it is issued. In case any bank wishes to give the power to issue cer-
162 tified checks to any other person than the president, vice-president, or cashier, notice thereof, properly attested, shall be sent to the other banks, and to the manager of the clearing-house, with the signature of the person authorized to certify. The system or practice of certifying checks should be discouraged, and adopted only in extreme cases.

Authority to certify to be filed with manager.

Certification discouraged.

Official stamp required, with number.

All items sent by members of this association through the exchanges must be stamped with an

official stamp, having thereon the number of the bank in the association, and the words "received payment through the clearing-house;" said stamp shall be considered a guarantee for all previous endorsements, whether written or stamped: Provided, that such official stamp shall not be construed to guarantee the absence of an endorsement.

Stamp a guarantee of endorsements, but not of absence of.

No other stamp than the one above mentioned shall be used by any of the banks, and the following resolution, adopted by each board of directors, attested by the cashier, with the seal of the bank, must be furnished to the several members of the association and the secretary:

No other stamp to be used.

Authorization of stamp to be sent.

Form of authorization of stamp.

NATIONAL BANK,
PHILADELPHIA, —— —, 18—.

At a stated meeting of the board of directors, held this day, the following resolution was adopted:

163 Resolved, That the officers of this bank be and are hereby authorized to use a suitable stamp for stamping all items sent through the exchanges, and this bank hereby holds itself responsible for all items so stamped and sent, as fully as though its endorsement was written.

In compliance with the above, after this notice, all items sent you through the exchanges will be stamped thus:—

(Stamp.)

Provided, that such official stamp shall not be construed to guarantee the absence of an endorsement.

[SEAL.] —— ——, *Cashier.*

Rule XXI.

Redemption of items for non-members through exchanges.

Whenever any bank, member of the Clearing House Association of the Banks of Philadelphia, desires to give notice that the notes, checks, and other obligations of or upon any bank of this city, not a member of the association, will be redeemed through the morning exchanges of such member, the association requires that a certified extract from the minutes of the board of directors of such redeeming bank be furnished to the Clearing House committee, embodying the resolutions adopting and assuming the payment of

Certified extract from minutes required.

164 such notes, checks, and other obligations, provided the same were good at the bank

on which drawn, before the commencement of the business of the day.

Additional security required.

Said notice shall not be extended beyond seven months from its date, and additional security, under article 17 of the association, will be required to be deposited with the committee to cover such exchanges.

Notices prohibited.

No such notices shall be given at the daily exchanges without the consent of the committee.

Rule XXII.

Clearing House due bills, form of, on approved paper.

The clearing-house due bills issued by the banks must be printed agreeable to the following form, upon paper adopted by the association:

No. —. *Clearing-house Due Bill.*

—— —— bank.

PHILADELPHIA, —— —, 18—.

Due by —— —— bank to —— ——, — thousand — hundred and — $\frac{}{100}$ dollars.

Countersigned.

This due bill is only good when signed by one, and countersigned by another authorized person, and is payable only in the exchanges through the clearing-house, the day after issue.

$\$\frac{}{100}$.

—— ——, *Teller.*

165

Rule XXIII.

Due bills, how issued, use limited.

The banks shall, in issuing these clearing-house due bills, insert the name or clearing-house number of the bank through whose exchange they are to be cleared, and when the name is not known, they shall be issued to banks, and shall be used only on the day of their issue, and in the exchanges between the banks.

For adoption, amendment, or repeal of rules and regulations, see article 20 of constitution, page 18.

Pennsylvania holiday and half holiday law.

An act designating the days and half days to be observed as legal holidays, and for the payment, acceptance, and protesting of bills, notes, drafts, checks, and other negotiable paper on such days.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same, That the following days and half days, namely, the first day of January, commonly called New Year's day, the twenty-second day of February, known as Washington's birthday, Good Friday, the thirtieth day of May, known as Memorial day, the fourth day of July, called Independence day; the first Monday of September, known as Labor day, the twenty-fifth day of December, known as Christmas day, and every Saturday after twelve o'clock noon until twelve o'clock midnight, from and including the fifteenth day of June until and including the fifteenth day of September, each of which Saturdays is hereby designated a half holiday, and any day appointed or recommended by the governor of this State or the President of the United States as a day of thanksgiving or fasting and prayer or other religious observance, shall for all purposes whatever as regards
167 the presenting for payment or acceptance, and as regards the protesting and giving notice of the dishonor of bills of exchange, checks, drafts and promissory notes made after the passage of this act, be treated and considered as the first day of the week, commonly called Sunday, and as public holidays and half holidays, and all such bills, checks, drafts and notes otherwise presentable for acceptance or payment on any of the said days, shall be deemed to be payable and be presentable for acceptance or payment on the secular or business day next preceding such holiday, or in case of a half holiday, shall be deemed to be payable and be presentable for acceptance or payment at or before twelve o'clock noon of such half holiday:

Provided however, that for the purpose of protesting or otherwise holding liable any party to any bill of exchange, check, draft or promissory note, and which shall not have been paid before twelve o'clock noon of any Saturday designated a half holiday as aforsaid, a demand of acceptance or payment thereof may be made at any time on said Saturday after twelve o'clock noon, and notice of protest or dishonor thereof may be given on the next succeeding secular or business day with the like effect as if it had been given on said Saturday:

And provided further, that when any person, firm, corporation, or company shall on any Saturday designated a half holiday receive for collection any check, bill of exchange, draft or promissory note, such person, firm, corporation or company shall not be deemed

guilty of any neglect or omission of duty nor incur any lia-
168 bility in not presenting for payment or acceptance or collecting such check, bill of exchange, draft or promissory note on that day:

And provided further, that in construing this section every Saturday designated a half holiday shall, until twelve o'clock noon, be deemed a secular or business day.

And the days and half days aforesaid so designated as holidays and half holidays shall be considered as public holidays and half holidays for all purposes whatsoever as regards the transaction of business: And provided further, that nothing herein contained shall be construed to prevent or invalidate the entry, issuance, service, or execution of any writ, summons, confession of judgment or other legal process whatever on any of the Saturday afternoons herein designated as holidays, nor to prevent any bank from keeping its doors open or transacting its business on any of the said Saturday afternoons, if, by a vote of its directors, it elects to do so.

SECTION 2. Whenever the first day of January, twenty-second day of February, the fourth day of July or twenty-fifth day of December, shall any of them occur on Sunday, the following day, Monday, shall be deemed and declared a public holiday. All bills of exchange, checks, drafts or promissory notes falling due on any of the Mondays so observed as holidays shall be due and payable on the Saturday preceding, except in case of the fourth day of July and the first Monday of September when the same shall be due and payable at or before twelve o'clock noon of the Saturday preceding, and all Mondays so observed as holidays shall for all purposes whatever, as regards the presenting for payment or accept-
169 ance, and as regards the protesting and giving notice of the dishonor of bills of exchange, checks, drafts and promissory notes, made after the passage of this act, be treated and considered as is the first day of the week commonly called Sunday. When the thirtieth day of May falls on Sunday, the day preceding it, Saturday, shall be observed as the holiday and payment of bills of exchange, checks, drafts and promissory notes due and payable on such holidays shall be made on the secular day next previous thereto, and in default of such payment the same may be protested, and such protest shall be as valid as if made on the day on which such bill, check, draft or note became due by its terms.

SECTION 3. All acts or parts of acts inconsistent herewith are hereby repealed.

Approved the 7th day of May, A. D. 1891.

ROB'T E. PATTISON.

OFFICE OF THE SECRETARY OF THE COMMONWEALTH,
HARRISBURG, *July 9th, A. D.* 1891.

PENNSYLVANIA, *ss:*

I do hereby certify, that the foregoing and annexed is a full, true, and correct copy of the original act of the General Assembly, en-

titled An act designating the days and half days to be ob-
170 served as legal holidays, and for the payment, acceptance, and protesting of bills, notes, drafts, checks and other negotiable paper on such days, as the same remains on file in this office.

In testimony whereof, I have hereunto set my hand and caused the seal of the secretary's office to be affixed the day and year above written.

[SEAL.] A. L. TILDEN,
Deputy Secretary of the Commonwealth.

171 And afterwards, to wit: on the third day of November, A. D. 1893, come the parties aforesaid, by their counsel aforesaid, and this cause being called for argument on final hearing, and having been argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards, to wit: on the twenty-eighth day of November, A. D. 1893, come the parties aforesaid, by their counsel aforesaid, and the court now being fully advised in the premises, renders the following opinion, viz:

Circuit Court of the United States, Eastern District of Pennsylvania.

ROBERT M. YARDLEY, Receiver, etc., *vs.* GEORGE PHILLER *et al.* } October Session, 1891. No. 44.

DALLAS, *Cir. J.*, Nov. 28, 1893:

The bill in this suit was filed by the receiver of the Keystone National bank against seven persons who are designated as "being the Clearing House committee of the Clearing House Association of the Banks of Philadelphia." It prays that said Clearing House Association be decreed to deliver to the plaintiff certain railway company bonds, and also certain checks, or, as to the latter, to pay to him the amount collected thereon. The claim with respect to the bonds is not insisted upon, and therefore, the case, as actually presented, relates only to the checks and the transactions connected with them. The defendants filed a joint answer; the evidence has been taken; and the cause, having been fully argued, is now for decision upon the pleadings and proofs.

Upon the morning of March 20, 1891, at the time appointed by the constitution of the Clearing House Association, a clerk of the Keystone bank, duly acting on its behalf, took to the clearing-house checks which had been deposited with that bank, and for which it had credited the respective depositors. These checks had been drawn on other banks, members of the association, and amounted in the aggregate to the sum of $70,005.46. They were not put up in a single package, nor were they delivered to the Clearing House Association, or to any representative of that body. They were enclosed in several sealed envelopes, each of which contained only the checks drawn on one particular bank, and to the agent of each bank, there present for the purpose of receiving such packages, the

envelope containing the checks drawn on that bank was delivered. At the same time and place, and in the same way, certain banks, members of the association, severally delivered to the Keystone bank checks drawn upon it, and which had been deposited with said other banks respectively, to the aggregate amount of $117,035.21. In no case was satisfaction then made for the checks thus delivered, either by or to the Keystone bank. This was to be accomplished through
172 the system of exchanges provided for by the Clearing House Association, which was created for the express purpose of effecting "at one place, the daily exchanges between the several associated banks, * * * and the payment, at the same place, of the balances resulting from such exchanges," but at a later hour. The Keystone bank, upon the day in question, having as has been stated, delivered checks to the amount of $70,005.46, and having received checks to the amount of $117,035.21, there resulted a balance of $47,029.75 against the Keystone bank arising from the exchanges of that day. If the only function of the Clearing House Association had been to provide a time and place for making these exchanges, its connection with the business would have ceased at this point, and the situation of the Keystone bank would have been, simply, that of debtor to each of the banks from which it had received checks to an amount greater than the amount of those which it had delivered to the same bank, and the amount of its indebtedness in each instance would have been the difference between the sum of the checks delivered by it and of the checks which it received. But the connection of the Clearing House Association with the matter did not end here. Under the constitution of that association the debtor banks were required to pay the whole amount of the balance against them respectively, not to the several creditor banks, but to the manager of the clearing-house—an agent of the association—and he, not the debtor banks, was to pay to the creditor banks the respective balances due them. Provision is also made (constitution, art. XVII) for securing these daily settlements, by the requirement that "each bank, member of the Clearing House Association, shall deposit securities with the Clearing House committee, as collateral for their daily settlements." In the case of the Keystone bank, however, this last provision had been made inoperative by a special agreement, which permitted and requires it, in lieu of the deposit of securities as collateral for its daily settlements, to leave the check packages which it received upon any day, with the manager of the clearing-house, to be held by him until the balance appearing against that bank upon the settlement of the same day, should be paid. This agreement had been made several months prior to March 20, 1891. It had been previously continuously acted upon, and the course prescribed by it was pursued on that day. The packages received by the clerk of the Keystone bank were placed in the possession of the manager of the clearing-house, to be retained by him until the balance of $47,029.75 against the Keystone bank should be paid to him, and were then to be returned to that bank. Thus far, it must be conceded, everything was done in conformity with the terms of the fundamental instrument of the Clearing House As-

sociation, by which the Keystone bank, as a member thereof, was bound, except as that instrument had been superseded by a subsequent separate agreement, to which the Keystone bank was a party, and as to the particular matter to which that separate agreement related, it was precisely complied with. All this had been done, too, in good faith, without knowledge of the impending insolvency of the Keystone bank. Soon after its packages had been left with the manager of the clearing-house, however, that bank was placed in the custody of an examiner, and of this the
173 manager of the clearing-house was immediately informed. He at once consulted the Clearing House committee, and was instructed by it to call upon the banks which had delivered to the Keystone bank the checks which the latter had left in his possession, to make them good. He acted upon this instruction, and upon receiving the full amount thereof, he handed over the checks to the banks from which the Keystone bank had received them. Thus, he disposed of all the checks which had been put in his possession by the Keystone bank, and received the sum of $117,035,21, as the proceeds of such disposition of them. He received their full value, and therefore no question is made upon that score. He had held them, unquestionably, as security for the payment, through the clearing-house, of the balance due by the Keystone bank, as per the settlement of exchanges made on that day, and therefore to the liquidation of that balance from the fund which they produced, the complainant has made no objection. But after this had been done there still remained in the possession of the Clearing House Association a surplus of $70,005.46, and upon an account of this last-mentioned sum being demanded, it is stated (the details appear in the evidence) that it was all applied to the payment of certain other indebtedness of the Keystone bank to other banks and in cancellation of a certain separate and distinct indebtedness to the Clearing House Association "on loan certificates previously issued to the said Keystone bank." Now, if the Keystone bank itself would not, because of its insolvency, have been permitted to make this use of this surplus, then, certainly, the Clearing House Association, with knowledge of the insolvency, could not lawfully so apply it. "Undoubtedly, any disposition by a national bank, being insolvent or in contemplation of insolvency, of its choses in action, securities, or other assets, made to prevent their application to the payment of its circulating notes, or to prefer one creditor to another, is forbidden" (Scott *vs.* Armstrong, 13 Sup. Ct. Rep. 148); and nothing could be more plain than that the effect, and, indeed the evident intent, of the disposition which was made of this sum of $70,005.46, was to prefer those amongst whom it was distributed. It is true that the assets of a bank, existing at the time of its insolvency, do not include all its property, without regard to any existing liens thereon or set-offs thereto; and that liens, equities, or rights arising by express agreement, or implied from the nature of the dealings between the parties, and not created in contemplation of insolvency, are not invalidated (Scott *vs.* Armstrong, *supra*); but no such rights, set-offs, or liens, as to any part of the surplus of $70,005.46 have been shown

to affect this case. Art. XVII of the constitution of the Clearing House Association, which requires that "each bank * * * shall deposit securities * * * as collateral for their daily settlements," does also provide that "the committee shall apply the deposit of any defaulting bank to the payment of the balance due by such bank at the clearing-house, * * * and the surplus, if any, shall be held as collateral security for other indebtedness to members of this association." But the deposit of these checks with the manager of the clearing-house was not made under that article. It was made under the special agreement, which obliged the Keystone bank to leave with the manager, the checks it received from the other
174 banks, but entitled it to receive them again immediately upon payment of its balance as shown by the settlement of that day, without performance of any other condition. They had not been subjected to, or pledged for, any other claim whatever. It is impossible to doubt, upon the evidence, that if the Keystone bank had not failed, and had, within the prescribed time, paid its daily balance, these checks would have been thereupon delivered to it without hesitation, or question of its right to receive them, or pretence of title to hold them for any further or additional object. The manager of the association testified as follows: "They were left until the balance should be paid—until the balance arising from that exchange should be paid." That agreement was applicable" (only) "to the Keystone bank." "And for the debt in the morning, the check packages were to be held until the balances were paid in the clearing-house." "They were left in a satchel in the custody of myself until the amount of the balance—$47,029.75 should be paid." "Q. Was that done in pursuance of an agreement made by the Keystone bank? A. It was." "Q. I understand that these packages of checks, alleged and supposed to amount to $117,035.21, were left with you to be handed over on payment of $47,029.75? A. That is correct." "Q. Had it (the special agreement) been acted upon every day during these two months that the Keystone bank was a debtor bank? A. It had." Here we have positive proof of what the agreement was; that it had been uniformly acted upon, and that it would have been followed upon March 20, 1891, but for the fact that the bank was closed upon that day. The following conclusions inevitably result. The disposition which was made of the surplus of $70,005.46 was not warranted by the agreement or by the practice and course of dealing of the parties. The checks from which that surplus was realized were deposited for a single special purpose, and, therefore, for no other object was there, or could there be, any right, set-off, equity, or lien attached to them; and the application of any part of their proceeds to the payment of any indebtedness of the Keystone bank, other than the balance of $47,029.75, was violative of law, in that it was a disposition of assets of an insolvent bank so as to work a preference, and with the manifest intention of producing that result.

The objection which has been urged, that the bill does not name the proper persons as parties defendant, may be briefly disposed of. It is alleged in the bill and admitted by the answer that the defend-

ants named "form and constitute the Clearing House committee of the Clearing House Association of the Banks of Philadelphia, and sue and are sued as such; and under the articles of association adopted by and governing said association are given and intrusted with the entire charge, care, management and control of the clearing-house affairs and transactions, and the custody and control of the funds and securities belonging to or deposited with it." This is, in itself, sufficient to support a suit against them as representative of the whole body, and, therefore, it is not necessary to consider whether the present bill might not be sustained under the familiar general rule of equity pleading, that "where there are many persons, defendants, belonging to a voluntary association, against whom the suit is brought * * * it is sufficient that such a num-
175 ber of the proprietors are brought before the court as may fairly represent the interests of all, where those interests are of a common character and responsibility." Story's Eq. Pl., § 116 *et seq.* The further contention, that "this suit should be against the parties who received the $70,005.46; that is to say, against those to whom the Clearing House Association paid the money, is, in my opinion, palpably unsound. That association was placed in possession of property of the Keystone bank. They disposed of it. They received the proceeds, and they applied them. To the extent that this application was unlawful they must answer for it. The receiver of the Keystone bank demands that the Clearing House Association shall turn over assets of that bank to him. They reply that they have disposed of them, and have used the money thereby obtained; and, having failed to show that they lawfully used it, he is clearly entitled to hold them responsible; he cannot be required to look to those to whom the Clearing House Association has, in violation of the statute, transferred assets of the insolvent bank.

A decree for the plaintiff, in accordance with this opinion, may be prepared and submitted.

No. 44, Oct. sess., 1891. C. C. U. S., E. D. of Pa. Robert M. Yardley, receiver, etc., *vs.* George Philler *et al.* Opinion ordering decree to be prepared in favor of plaintiff. Filed Nov. 28, 1893. Samuel Bell, clerk.

176 In the Circuit Court of the United States for the Eastern District of Pennsylvania, of October Sessions, 1891, Sitting in Equity.

ROBERT M. YARDLEY, Receiver of the Keystone National Bank,
against
GEORGE PHILLER, President First National Bank, Chairman; Benjamin B. Comegys, President Philadelphia National Bank; Henry C. Stroup, Cashier Farmers' & Mechanics' National Bank; Jacob Naylor, President Eighth National Bank; John H. Michener, President Bank of North America; George M. Troutman, President Central National Bank; James V. Watson, President Consolidation National Bank, Being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia. } No. 44.

Decree.

And now, to wit, this 30th day of January, A. D. 1894, this cause being heard upon bill, answer and proofs, and upon due consideration thereof by the court, it is

Adjudged and decreed that the said defendants above named do pay unto the plaintiff above named, as receiver of the Keystone National bank, the sum of seventy thousand and five and forty-six one-hundredths ($70,005.46) dollars, together with interest thereon from the 20th day of March, 1891, with the costs of this suit; and it is further in conformity with and in pursuance of the agreement of counsel of the respective parties

Adjudged and decreed that the one hundred bonds of the Baltimore Traction Railway Company, mentioned in said bill of complaint, were, and are hereby adjudged to have been, held by the defendants as collateral security for the payment of clearing-house loan certificates issued to the Keystone National bank, and which said bonds were sold by the defendants and the proceeds thereof applied by them in reduction and payment of the said clearing-house certificates so far as said proceeds would pay the same as of the date of the receipt by said defendants of said proceeds of
177 sale. The complainant's second prayer for relief is denied; and it is further

Adjudged and decreed that this decree shall be without prejudice to the right of the complainant to demand and enforce an accounting by the defendants of all the collateral securities held by them, or by the Clearing House committee of the Clearing House Association of the Banks of Philadelphia, or by said association to secure the payment of clearing-house loan certificates issued to the Keystone National bank, and it shall be without prejudice to the rights of the defendants, or the Clearing House committee of the Clearing House Association of the Banks of Philadelphia, to enforce and collect any of the said collateral securities not yet collected, and to apply the same, as far as may be necessary, in further reduction

and payment of the balance due upon said clearing-house loan certificates and to make due proof of and proceed to collect the amount of the balance, if any there be, due by the Keystone National bank to said defendants, or the above-mentioned committee, or the above-mentioned association, upon said clearing-house loan certificates, together with interest and all proper charges thereon.

GEO. M. DALLAS, *C. C. J.*

Endorsed: 44. October sessions, 1891. C. C. U. S. In Equity. Yardley, receiver, etc., *vs.* Philler *et al.* Decree. Read and Pettit. Filed January 30, 1894. Samuel Bell, clerk.

Circuit Court of the U. S., Eastern District of Pennsylvania, October Sessions, 1891.

ROBERT M. YARDLEY, Receiver of the Keystone National Bank,
vs.
GEORGE PHILLER, President First National Bank, Chairman; Benjamin B. Comegys, President Philadelphia National Bank; Henry C. Stroup, Cashier Farmers' and Mechanics' National Bank; Jacob Naylor, President Eighth National Bank; John H. Michener, President Bank of North America; George M. Troutman, President Central National Bank; James V. Watson, President Consolidation National Bank, Being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia. } No. 44.

The above-named defendants, conceiving themselves aggrieved by the final decree entered in the office of the clerk of this
178 court on the 30th day of January, 1894, in the above-entitled cause, do hereby appeal therefrom to the United States circuit court of appeals for the third circuit, and they pray that their appeal may be allowed and a citation granted, directed to the above-named complainant, commanding him to appear before the United States circuit court of appeals for the third circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the papers used in said cause, duly authenticated, may be sent to said United States circuit court of appeals for the third circuit.

GEORGE PHILLER, *Chairman.*

A. T. FREEDLEY,
JOHN G. JOHNSON,
Solicitors for Defendants.

The foregoing appeal is hereby allowed. Dated the 6th day of February, 1894.

GEO. M. DALLAS, *C. C. J.*

Endorsed: 44. Oct., 1891. C. C. of the U. S. Yardley *vs.* Philler *et al.*, etc. Petition for appeal. Filed Feb. 8, 1894. Samuel Bell, clerk. Freedley, Johnson.

ROBERT M. YARDLEY, Receiver of the Keystone National Bank,
vs.
GEORGE PHILLER *et al.*, Being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia.

Assignments of Error.

And now come the said defendants and say that in the record and proceedings and opinion and judgment of the said court in the above-entitled cause in entering a final decree against defendants there is manifest error, and the said defendants allege that the court erred in the following particulars:

1. In decreeing that the defendants do pay unto the plaintiff the sum of $70,005.46, together with interest thereon from the twenty-first of March, 1891, with the costs of this suit.

2. In deciding that although on March 20, 1891, the Keystone National bank owed these defendants $335,000, and also owed the Clearing House Association the sum of $23,000, and also owed other banks, members of the association, the sum of $17,000, yet that the said defendants were not entitled to retain any part of the
179 $70,005 of the Keystone bank which the court decreed to have been in their hands to meet this indebtedness.

3. In decreeing that the defendants were personally liable for the sum of $70,005.46 with interest, when they never received any portion of the said money and only received the proceeds thereof to the extent of $28,000.

4. In not holding that if any right of action exists, such suit or action should be against the parties who actually received the money, and not against these defendants who did not receive it.

5. In deciding that under the rules of the Clearing House Association the amount of the runners' due bill of $23,031.44 due by the Keystone bank on March 19, 1891, was not entitled to be deducted from the total charge of the Keystone bank against the clearing-house of $70,005.46.

6. In deciding that the due bills presented by banks, members of the association on March 20, 1891, and amounting to $17,896.84 were not payable from the total charge of the Keystone bank of $70,005.

7. In not dismissing the bill of complaint.

Wherefore the said defendants pray that the final decree of the circuit court of the United States for the eastern district of Pennsylvania be reversed and the said circuit court of the United States for the eastern district of Pennsylvania be directed to enter an order vacating said final decree heretofore made.

Endorsed: 44. Oct. sess., 1891. C. C. U. S. Yardley *vs.* Philler *et al.* Assignment of errors. Filed Feb. 8, 1894. Samuel Bell, clerk. Freedley, Johnson.

Know all men by these presents that *I*, George Philler, chairman of the Clearing House committee, etc., as principal, and George Philler, as surety, are firmly held and bound unto Robert M. Yard-

ley, receiver of the Keystone National bank, in the full and just sum of ninety thousand dollars, to be paid to the said Robert M. Yardley, receiver as aforesaid, his certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixth day of February, in the year of our Lord one thousand eight hundred and ninety-four (1894).

Whereas, lately at a session of the circuit court of the United States for the eastern district of Pennsylvania, in a suit depending in said court, between Robert M. Yardley, receiver as aforesaid, and George Philler, chairman, *et al.*, being the Clearing House committee, &c., a full decree was rendered against the said George Philler, chairman, *et al.*, &c., and the said George Philler, chairman, *et al.*, &c., having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the said decree in the aforesaid suit, and a citation directed to the said Robert M. Yardley,
180 receiver as aforesaid, citing and admonishing him to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia, within thirty days:

Now, the condition of the above obligation is such, that if the said George Philler, chairman, *et al.*, &c., shall prosecute their appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

GEO. W. PHILLER, *Chairman.* [SEAL.]
GEO. W. PHILLER. [SEAL.]

Sealed and delivered in the presence of—
W. J. DOWNS.

Approved by—
READ & PETTIT.

Approved February 6, 1894.

GEO. M. DALLAS, *C. J.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Robert M. Yardley, receiver of the Keystone National bank, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the third circuit, to be holden at the city of Philadelphia within thirty days, pursuant to an appeal filed in the clerk's office of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, wherein George Philler, president First National bank, chairman, Benjamin B. Comegys, president Philadelphia National bank, Henry C. Stroup, cashier Farmers' and Mechanics' National bank, Jacob Naylor, president Eighth National bank, John H.

Michener, president Bank of North America, George M. Troutman, president Central National bank, Jas. V. Watson, president Consolidation National bank, being the Clearing House committee of the Clearing House Association of the Banks of Philadelphia, are appellants and you are appellee, to show cause, if any there be, why the decree rendered against the said appellants as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George M. Dallas, judge of the circuit court of the United States, this 13th day of February, in the year of our Lord one thousand eight hundred and ninety-four.

GEO. M. DALLAS, *C. J.*

Service accepted, and enter my appearance.

SILAS W. PETTIT,
For R. M. Yardley.

January 16, 1894.

181 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Pennsylvania, }

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the following to be a true and faithful copy of the original pleas and proceedings in the case of Robert M. Yardley, receiver, etc., *vs.* George Philler *et al.*, No. 44, October session, 1891, on file and now remaining among the records of said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 17th day of February, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States the one hundred and eighteenth.

[SEAL.] SAMUEL BELL, *Clerk of C. C.*

182 And afterwards, to wit, on the sixteenth day of March, A. D. 1894, this cause being called for argument, before Hon. M. W. Acheson, circuit judge, and Hon. William Butler and Hon. Edward I. Green, district judges, and being argued by counsel for the respective parties, and the court, not being fully advised in the premises, takes further time for consideration thereof.

And afterwards, to wit, on the twelfth day of July, A. D. 1894, comes the parties aforesaid, by their counsel aforesaid, and the court, now being fully advised in the premises, renders the following opinion, viz:

183 United States Circuit Court of Appeals for the Third Circuit.

GEORGE PHILLER *et al.*, Appellants,
vs.
ROBERT M. YARDLEY, Receiver of the Keystone National Bank, Appellee.

Appeal from the Circuit Court of the United States for the Eastern District of Pennsylvania.

Before Acheson, Butler, and Green, *J. J.*

ACHESON, *J.:*

Upon a bill brought by Robert M. Yardley, receiver of the Keystone National bank, against seven individuals, constituting the managing committee of the Philadelphia Clearing House Bank Association, the court below rendered a decree for $70,005.46, with interest from March 20th, 1891, against the defendants, who are here the appellants, upon the ground that after the known insolvency of the named bank they applied (as was charged) its funds in their hands or under their control to the payment of its debts to the clearing-house association and to members thereof, with a view of giving them an unlawful preference over other creditors.

The Clearing House Association of the city of Philadelphia is a voluntary, unincorporated association, composed of the national banks of that city, its main object being to effect at one common meeting place, called the clearing-house, the daily exchanges between the associated banks. Its affairs are under the general supervision of a committee of seven bank presidents, selected by a majority of the associated banks and serving without compensation. This committee appoints a manager, who has immediate charge of the conduct of the business at the clearing-house. All ex-
184 changes, however, are made directly between the banks themselves, through clerks representing them respectively. All the checks, drafts, and other evidences of indebtedness to be exchanged are brought to the clearing-house in sealed packages, which are never opened there. The gross amount of the alleged contents of each package is indorsed upon the envelope, but not the items. The clerk of each sending bank delivers directly to the clerk of the receiving bank the sealed package of checks and other obligations held by the former against the latter bank. Receipts pass directly between the clerks of the sending and receiving banks. After the exchanges are thus made the gross totals only are reported to the clearing-house manager, who, upon this information, makes up a sheet of differences to be adjusted and settled between the various banks. Upon this sheet each debtor bank settles the amount due by it to the creditor banks by paying the same to the clearing-house manager, who immediately distributes it to and amongst the creditor banks.

The Keystone National Bank of Philadelphia was a member of the Clearing House Association. On March 20th, 1891, at 8.30 o'clock a. m., the hour fixed for the money exchange, the messenger

of that bank appeared at the clearing-house with sealed packages, purporting to contain exchanges against other banks, members of the association, amounting to $70,005.46. These packages he delivered directly to the clerks of the other banks and received from them receipts therefor. At the same time the messengers of other banks, members of the association, delivered to the clerk of the Keystone National bank sealed packages of exchange against it, purporting to amount to the sum of $117,035.21, and took from him receipt therefor. Thus there was a balance of $47,029.75 against the Keystone National bank on that morning's exchange.

After receiving the sealed packages of checks and other exchanges, purporting to amount to $117,035.21, the clerk of the Key-
185 stone National bank left those packages in the custody of the manager of the clearing-house until the bank should pay the $47,029.75 difference, which it was bound to do by twelve o'clock of that day. The reason for the deposit was this: Article 17 of the constitution of the Clearing House Association required each bank to deposit with the Clearing House committee collateral security for the payment of its daily balances. In December, 1890, however, at the instance and for the benefit of the Keystone National bank, a special arrangement was entered into between it and the Clearing House committee, whereby all the security held under article 17 to secure its daily balances was transferred to its loan-certificate account with the clearing-house, so as to enable it to receive upon that security further advances of loan certificates, and it was agreed that thereafter at the morning exchange the clerk of the Keystone National bank after receiving the packages of checks and other exchanges from the creditor banks should leave the packages with the clearing-house manager as security that any debtor balance due by it on that settlement should be paid by the bank before twelve o'clock of the same day.

The Keystone National bank did not pay its debtor balance of $47,029.75 due on the morning exchange of March 20th, 1891, by twelve o'clock that day, and that balance has never been paid or tendered.

Shortly after 10 o'clock, on the same day, by virtue of an order made by the Comptroller of the Currency, the Keystone National bank was closed by William P. Drew, bank examiner, and thereafter Robert M. Yardley was appointed receiver thereof.

After twelve o'clock, on the same day (March 20th, 1891), the clearing-house manager, acting under the instructions of the Clearing House committee, notified the banks which had presented the packages containing the checks, drafts, and other evidences of indebtedness against the Keystone National bank for $117,035.21 that they must make those packages good by paying into the clearing-house that amount of money, and accordingly in compliance with this demand those banks forthwith paid to the clearing-
186 house manager $117,035.21 in cash and took away the packages.

After the morning exchange on that day the state of accounts between the Keystone National bank and the Clearing House Asso

ciation was this. The debtor balance of the bank on that morning's settlement, as we have seen, was $47,029.75. Its debtor balances on the exchanges of the preceding day amounted to $41,197.36, for which it had issued its clearing-house due bills, two thereof amounting to $23,390.52, to the Clearing House Association and several others, amounting to $17,806.84, directly to certain banks of the association. These due bills were in the form prescribed by the rules of the association, bore date March 19th, 1891, and by their terms were "payable only in the exchanges through the clearing-house the day after issue." Then, in addition to its debtor balances on these exchanges, the Keystone National bank owed $335,000, on clearing-house loan certificates which had been issued to it previously by the Clearing House committee, agreeably to the provisions of a written agreement between all the associated banks. To secure the payment of this last-mentioned indebtedness for $335,000, the bank had deposited with the Clearing House committee collateral securities; but the other banks were ultimately responsible for that debt in case of a deficiency in the collaterals, for by the terms of the written agreement referred to any loss caused by the non-payment of clearing-house loan certificates issued by the committee to any member of the association was assessable upon all the other banks in the ratio of capital.

187 The money, namely, the $117,035.21, which the other banks, upon the call of the Clearing House committee, paid on March 20th, 1891, to the clearing-house manager, he immediately appropriated by the direction of the committee in manner following, to make good the balance due by the Keystone National bank on that morning's exchanges, $47,029.75; to the payment of the due bills given by the bank for its debtor balances on the exchanges of the preceding day, $41,197.36; and the residue, $28,808.10, he applied toward the cancellation of the clearing-house loan certificates which had been issued to that bank. Has the receiver of the bank any just reason to complain of that appropriation or of the transaction in any respect?

The receiver of an insolvent national bank takes its assets subject to all just claims and defences that might have been interposed against the corporation itself, and all liens, equities, and rights arising by express agreement or implied from the nature of the dealings between the parties or by operation of law prior to insolvency and not in contemplation thereof remain unimpaired. Scott *v.* Armstrong, 146 U. S., 499, 510. The morning exchange on March 20th between the Keystone National bank and its clearing-house associates in itself was unimpeachable. It took place before the bank examiner acted. The Clearing House Association had no reason to suspect the impending failure. On the part of the bank itself the transaction was in the regular course of its business and with a view to continued operations. It did not act in contemplation of insolvency nor with a purpose to give one creditor a preference over another or to prevent the application of its assets in the manner prescribed by law in case of insolvency.

The rights of the parties were fixed when the bank was closed

As between the Keystone National bank and the other banks the morning exchange had been already consummated. The packages of exchanges on the one side and the other had been delivered and receipted for. The exchange itself was an accomplished
188 fact. What remained to be done was the payment by the Keystone National bank of its debtor difference of $47,029.75 to the clearing-house manager. To insure this payment by twelve o'clock the bank, under its arrangement with the Clearing House committee, left its sealed package in the hands of the clearing-house manager. The bank, however, defaulted, and what afterwards occurred in the clearing-house was in consequence. The situation was unprecedented. The bank had been closed by the Government officer. The pledge was not an ordinary one. The sealed packages on temporary deposit with the clearing-house manager did not contain assets of the bank, but checks and drafts drawn upon it and other evidences of its indebtedness. As the packages contained commercial paper prompt action might be necessary to hold indorsers and drawers. In the emergency, occasioned wholly by the default of the Keystone National bank, whose supposed equity is the foundation of this bill, the Clearing House committee made the call upon the other banks already mentioned. Whether those banks were bound to comply with that demand to its full extent we need not inquire. Under the stress of the situation they saw fit to do so, and paid into the clearing-house of their own moneys $117,035.21, and relieved the manager of his custody of the packages. Did this work an annulment of the morning exchange? We cannot so conclude. That deduction would be highly unreasonable. That the banks which paid in this money intended such a result is incredible. The whole transaction negatives the idea of intended recission. Indeed, the other banks had no right to undo the morning exchange without the concurrence of the Keystone National bank. Nor was it to their interest to disturb what had taken place. Why should they pay this large sum of money into the clearing-house in relief of the debtor bank? Assuredly, this money was not paid for the benefit or use of the Keystone National bank. The other banks made the
189 payment in promotion of their own interests as members of the association, primarily in order that they might make settlements *inter se*. This they were at liberty to do without relinquishing any of their rights or equities as against their defaulting associates. The obligation of the Keystone National bank to pay its debtor balance remained in full force. Without the payment of the $47,029.75 the bank was not entitled to the return of the deposited packages; hence those packages were rightfully withheld from the bank, Nothing is better settled than the right of a transferee of a pledge to hold it until the debt for which it was given is paid. Story on Bailments, sec. 327; Donald *v.* Suckling, Law R. I., Q. B., 585; Talty *vs.* Freedman's Saving and Trust Co., 93 U. S., 321. This principle is peculiarly applicable here, for the clearing-house manager held the deposited packages for the benefit of the creditor banks. It is our judgment that the morning exchange between the associated banks was valid and was not avoided or the

rights thereunder of the Clearing House Association or of the creditor banks impaired by what subsequently occurred.

It is quite plain that the court below proceeded upon views radically different from those we have expressed. The decree, it will be perceived, entirely overlooks the default of the Keystone National bank and puts the receiver in a far better position than the bank would have been in had it fulfilled the terms of its pledge. Had it done that it would have paid into the clearing-house $47,029.75, whereas without paying anything the receiver has a decree requiring the defendants to account to him for the whole $70,005.46. We are unable to accept that result as just. The principle of the decision of the supreme court in the case of Scott *v.* Armstrong, *supra*, requires that the equities and rights arising from the express
190 agreements or implied from the nature of the dealings between the Keystone National bank on the one side and the Clearing House Association or the other members thereof on the other side prior to the closing of the bank shall be preserved and enforced.

Was anything done prejudicial to the right of the Keystone National bank or its receiver? As already stated, the clearing-house due bills, amounting to $41,197.36, which the bank had given for its balances on the exchanges of the preceding day, were paid out of the fund claimed by the receiver. Can the rightfulness of that appropriation be gainsaid? On the face of each due bill it was stipulated that it was "payable only in the exchanges through the clearing-house the day after issue." Those due bills were actually in the morning exchange on March 20th, 1891. They were in the packages, amounting to $117,035.21, delivered to the clerk of the Keystone National bank. They were entitled to payment out of the bank's credit of $70,005.46 in that morning's exchanges. The application of the $41,197.36 to those due bills was therefore right, even upon the receiver's hypothesis as to the origin of the fund which the Clearing House manager disbursed. The due bills were extinguished. By no possibility can they come against the funds in the hands of the receiver.

Is the receiver in any position to question the application of the $28,808.10 to the indebtedness of the Keystone National bank as a member of the Clearing House Association on its loan-certificate account? That liability arose from the course of dealings between the bank and the clearing-house and under an express agreement between all the members thereof whereby the other associated banks were chargeable with any loss occasioned by the failure of the Keystone National bank to pay. The other banks, therefore, had a prevailing equity to have applied to that debt money of their
191 own which they paid into the clearing-house under the circumstances as disclosed. How can the receiver object that, as the outcome of the settlement between the other banks, a balance from funds which they provided was applied to the reduction of the debt due by his bank? Then, again, the receiver, who has no higher rights than his banks, is in a court of equity. Here he is met by the default of the bank in not paying into the clearing-

house the $47,029.75 it was bound to pay. He has not deemed it to be for the interest of his trust to pay that money. He does not propose to do so. How, then, can he ask a decree against the defendants for the $28,808.10? Obviously, to the extent of his bank's default, he is without equity.

For the reasons stated we hold that the receiver has no good ground upon which to challenge the transactions in the clearing-house. We add a single observation. As the right of set-off existed between the banks (Scott *v.* Armstrong, *supra;* Yardley *v.* Clothier, 51 Fed. Rep., 506), it is by no means clear that the other creditors of the Keystone National bank would have fared better if the exchange had not taken place. With claims aggregating $117,035.21 as against claims for $70,005.46, it would seem improbable that anything would have been recoverable by the receiver.

Finally, the receiver does not show himself to be entitled to equitable relief of any nature. The due bills for $41,197.36 are entirely out of the way. It does not appear that any items in the packages for $117,035.21 have been proved against the funds in the hands of the receiver or have been presented to him for payment, or that any suit thereon has been brought or is threatened. If the receiver has the right to insist upon the formal cancellation of $28,808.10 of those items (which is the utmost he can claim) the present bill is not available to him to secure such decree.
192 No such relief is here sought. The bill is not framed for that purpose. It is not apparent that the receiver needs the aid of a court of equity. But if he is entitled to such equitable relief it is as against the other banks. Those banks are not parties to this suit.

The decree of the circuit court is reversed and the case is remanded to that court with directions to dismiss the bill of complaint.

Green, district judge, dissents.

BUTLER, *J.:*

While I believe the foregoing opinion sufficiently vindicates the conclusion reached, I desire, in view of the dissent expressed, to add a few lines.

It must be kept in mind that the suit is against certain individuals as the Clearing House committee, and not against the banks involved in the exchange. If the latter did anything by which the plaintiff is aggrieved we cannot consider it here. The defendants are only liable for their own acts. These acts are those connected with the exchange of March 20th, 1891. What were they? On the morning of that day the Keystone bank delivered to their manager a package of its own obligations (received from other banks for cancellation) to be held as security for the payment of $47,000, which it had undertaken to pay by 12 o'clock that day. It did not pay; and as the value of the security depended upon holding the endorsees, the committee, on being indemnified by the receipt of an equal sum of money from the other banks, handed the

obligations over to them. On this state of facts, what claim has the receiver on the committee? Until the $47,000 are paid by the Keystone or the receiver, neither has any right to the obligations,
193 nor can either complain of the disposition made of them. When the money for which they are pledged is paid the receiver will be entitled to them, and the committee must then produce them or account for their value. The bank did not pay the money and the receiver will not, because it greatly exceeds the value of the obligations, which consist of promises of the broken bank, comparatively worthless. Their value is just the amount of the dividends they will draw if not redeemed. If the receiver redeems them, he, or rather the creditors of the bank, will be benefitted to the extent of the dividends thus saved, nothing more.

The fundamental error of the plaintiff consists in the assumption that the exchange of obligations was annulled by the subsequent transaction between the committee and the other banks respecting which nothing need be added to what is said in the foregoing opinion.

But if we concede this assumption the plaintiff will not be helped. The annullment of the exchange, if it bound the Keystone, might and doubtless would entitle the latter to a return of the $70,000 of obligations which it had previously held. But it would not render the committee liable for their return. The committee never had nor saw them.

But even conceeding the committee's responsibility for their return, the assumption that it became liable to pay $70,000 for failure to return them is clearly erroneous. In such case the measure of damages would be the amount the receiver lost by such failure. This would be the value of the obligations to him and the creditors. Let us see what this is. The banks owing the obligations held $117,000 of the Keystone's liabilities, which were a valid setoff. The receiver could not therefore recover a cent. The obligations nevertheless had some value, as they would extinguish $70,000 of the Keystone's liabilities, thus diminishing the claims against its assets that much, saving to the creditors the dividends which the $70,000 of obligations would draw if not cancelled.
194 This, then, is the loss from failure to return them. If the assets will pay 30 per cent. (which is very improbable) the dividends on $70,000 would be $21,000. Thus we see, even assuming that the exchange was annulled and that the committee became responsible for the obligations, the receiver is not entitled to $70,000, as claimed and awarded. As the dividend rate is not ascertained, we cannot know what (in this view) the receiver's loss is.

But the plaintiff further assumes that the clearing-house received $70,000 for the Keystone bank in its transaction with the other banks after the Keystone's failure. This assumption is wholly unwarranted. Nothing, I think, can be plainer than that the other banks did not pay any money to the committee for the Keystone or its receiver. Why should they? What object could they have in doing so? They owed that bank nothing. On the contrary, it owed them. Why, therefore, should they volunteer to

pay the obligations it had held against them while they held its obligations (which were an available set-off) exceeding that amount in $47,000? In doing so they would simply throw away $70,000 (saving the inconsiderable sum that might be recovered back in dividends). It is clear that none of the money paid to the committee was intended for the Keystone or inured to its benefit. It gave up nothing. Its rights under the exchange remain intact. When it pays its debt the obligations must be returned or their value accounted for. The object of the other banks in paying money to the committee is not clear, and we are not called upon to ascertain it. Why it was paid and what was done with it is unimportant. It was their own to do with as they pleased. It was probably paid to settle balances among themselves. But whatever the object was, it is clear that it was not to benefit the Keystone bank and did not interest it. It is conceded that the object was to benefit themselves alone.

195 The erroneousness of the decree may be illustrated by another statement. The Keystone bank cannot claim to be placed in a better position than it occupied at the date of its failure, or to be benefitted by its refusal to keep its contract and the action forced on the other banks thereby. Yet it is indisputable that the decree does place it in an infinitely better position—gives it, in effect, over $80,000 as a premium for its faithlessness. Let us see if this cannot be demonstrated. If the bank had kept its contract it would have paid out $47,000, which would have been lost to the receiver and creditors by diminishing the assets for distribution that much. It would then receive $117,000, not of money, but of its own nearly worthless obligations, for cancellation. The receipt of these obligations would have benefitted the receiver and creditors just to the extent of the dividend the obligations would draw if not cancelled. Now, supposing the dividend rate to be 30 per cent. (which is doubtless much too high), the dividends on the $117,000 of obligations would be $35,100. To redeem and cancel them costs $47,000; deducting the $35,100 from this shows a loss to the receiver and creditors of $11,900 as the result of carrying out the contract. The receiver acted wisely, therefore, in not carrying it our; he saved $11,900; but because he did not carry it out and the committee and the other banks entered into the subsequent transaction on their own account and for their own exclusive benefit, he is given an additional sum of $70,000, and is thus made a gainer in $81,900 by the failure to keep the contract.

If the banks had intended to annul the exchange of obligations (which they could not do after the receiver's rights attached) they would of course have returned the obligations received by them from the Keystone and set off against them the obligations of that bank which they held. To pay it, or for it, $70,000 in money,

196 as it is alleged they did, would have been an act of folly incompatible with sanity. Of course nothing of the kind was intended or done.

Filed July 12, 1894.

197 And afterwards, to wit, on the twentieth day of July, A. D. 1894, the court enters the following order, viz:

United States Circuit Court of Appeals, Third Circuit, March Term, 1894.

GEORGE PHILLER, President First National Bank, Chairman; Benjamin B. Comegys, President Philadelphia National Bank; Henry C. Stroup, Cashier Farmers' and Mechanics' National Bank; Jacob Naylor, President Eighth National Bank; John H. Michener, President Bank of North America; George M. Troutman, President Central National Bank; Jas. V. Watson, President Consolidated National Bank, Being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia, Appellants,
vs.
ROBERT M. YARDLEY, Receiver of the Keystone National Bank. } No. 12.

Appeal from the circuit court of the United States for the eastern district of Pennsylvania.

198 This cause came on to be heard on the transcript of record from the circuit court of the United States for the eastern district of Pennsylvania and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs.

And it is further ordered that this cause be remanded to the said circuit court with directions to dismiss the bill of complaint.

WM. BUTLER, *J.*

Philadelphia, July 20th, 1894.

199 Supreme Court of the United States, October Term, 1895.

ROBERT M. YARDLEY, Receiver of the Keystone National Bank,
vs.
GEORGE PHILLER, President First National Bank, Chairman; Benjamin B. Comegys, President Philadelphia National Bank; Henry C. Stroup, Cashier Farmers' and Mechanics' National Bank; Jacob Naylor, President Eighth National Bank; John H. Michener, President Bank of North America; George M. Troutman, President Central National Bank; James V. Watson, President Consolidation National Bank, Being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia. } No. —.

To the honorable the judges of the said court:

The petition of Robert M. Yardley, receiver of the Keystone National bank, respectfully represents—

That, conceiving himself aggrieved by the final decree entered in the office of the clerk of the circuit court of appeals of the United States for the third circuit on the 12th day of July, A. D. 1894, in the above-entitled cause, he does hereby appeal therefrom to the Supreme Court of the United States.

That your petitioner is the receiver of the Keystone National bank, duly appointed as such by the Comptroller of the Currency of the United States upon the ninth day of May, A. D. 1891, the said Comptroller of the Currency acting therein under and by virtue of the provisions of the act of Congress relating to
200 national banks, in that behalf enacted, said Keystone National bank having become theretofore, to wit, upon the 20th day of March, 1891, insolvent and been closed and taken possession of as such by him.

That this suit was a bill in equity and was brought by your petitioner in the circuit court of the United States for the eastern district of Pennsylvania for the purpose of winding up the affairs of said Keystone National bank and was brought for an accounting and to recover the sum of seven thousand and five and forty-six hundredth- dollars claimed to be due to your petitioner as receiver of said Keystone National bank from the defendant, The Clearing House Association of the Banks of Philadelphia, by reason of the alleged wrongful appropriation of checks, notes, and commercial paper and the proceeds arising therefrom, sent to it for exchange upon the morning of the 20th day of March, 1891; that your petitioner and defendants are all resident of the eastern district of Pennsylvania, and the jurisdiction does not depend upon the opposite party to the suit being aliens and citizens of the United States or citizens of different States, but is brought as aforesaid by an officer of the United States and arises under the laws thereof.

That in the circuit court of the United States for the eastern district of Pennsylvania a decree was entered in favor of your petitioner and directed the payment to him of the sum of seventy thousand and five and forty-six hundredth- dollars, with interest from the 20th day of March, 1891, and costs; that on appeal to the circuit court of appeals of the United States for the third circuit the said decree was reversed, and it was ordered that the cause be remanded, with direction to dismiss your petitioner's bill
201 with costs, which judgment or decree was entered in the office of the clerk of the circuit — on the 12th day of July, 1894, as aforesaid.

That he makes this application under and by direction of the Comptroller of the Currency of the United States, and prays that his appeal may be allowed and a citation granted, directed to the above-named defendants, commanding them to appear before the Supreme Court of the United States, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the papers in the said case, duly authenticated, may be sent to the said Supreme Court of the United States.

And he will ever pray, &c.

ROBERT M. YARDLEY,
Receiver of Keystone Nat'l Bank.

(Endorsed :) Rob't M. Yardley, receiver of the Keystone Nat. B'k, *vs.* Philler *et al.* Petition for appeal. Appeal allowed and citation granted. George Shiras, Jr., ass't justice of the U. S., June 26th, 1895. Silas W. Pettit. Filed June 28, 1895.

202 In the United States Circuit Court of Appeals for the Third Circuit, of March Term, 1894.

GEORGE PHILLER, President First National Bank, Chairman; Benjamin B. Comegys, President Philadelphia National Bank; Henry C. Stroup, Cashier Farmers' and Mechanics' National Bank; John H. Michener, President Bank of North America; George M. Troutman, President Central National Bank; James V. Watson, President Consolidation National Bank, Being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia, Appellants,
vs.
ROBERT M. YARDLEY, Receiver of the Keystone National Bank. } No. 12.

Assignments of Error.

And now, to wit, this 17th day of May, A. D. 1895, the defendant files his assignments of error in the above cause, and assigns for error therein the following:

I. That the learned court erred in reversing the decree of the circuit court.

II. That the learned court erred in not affirming the decree of the circuit court.

III. That the learned court erred in remanding the case to the circuit court with directions to dismiss the bill of complaint.

SILAS W. PETTIT,
Att'y for Defendant in Error.

(Endorsed :) 12. March term, 1894. U. S. circuit court of appeals, third circuit. Philler *v.* Yardley. Assignments of error. Filed May 17, 1895. Wm. V. Williamson, clerk. Silas W. Pettit.

203 UNITED STATES OF AMERICA, *ss:*

The President of the United States to George Philler, president First National bank, chairman; Benjamin B. Comegys, president Philadelphia National bank; Henry C. Stroup, cashier Farmers' and Mechanics' National bank; Jacob Naylor, president Eighth National bank; John H. Michener, president Bank of North America; George M. Troutman, president Central National bank; Jas. V. Watson, president Consolidation National bank, being the Clearing House committee of the Clearing House Association of the Banks of Philadelphia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, within thirty days, pursuant to an appeal filed in the clerk's office

of the United States circuit court of appeals for the third circuit, wherein Robert M. Yardley, receiver of the Keystone National bank, is appellant and you are defendant in error, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable George Shiras, Jr., of the Supreme Court of the United States, this 29th day of June, in the year of our Lord one thousand eight hundred and ninety-five.

GEORGE SHIRAS, JR.,
Associate Justice of the Supreme Court of the United States.

203½ Service of the within citation is hereby accepted on behalf of the within-named respondents, and the clerk is requested to enter my appearance therefor.

A. T. FREEDLEY.

July 1, '95.

204 UNITED STATES OF AMERICA, *sct:*

I, William V. Williamson, clerk of the United States circuit court of appeals for the third circuit, do hereby certify the foregoing pages from one to two hundred and four, inclusive, to contain a full, true, complete, and faithful copy of the original transcript of record in the case of George Philler, president First National bank, chairman; Benjamin B. Comegys, president Philadelphia National bank; Henry C. Stroup, cashier Farmers' and Mechanics' National bank; Jacob Naylor, president Eighth National bank; John H. Michener, president Bank of North America; George M. Troutman, president Central National bank; James V. Watson, president Consolidation National bank, being the Clearing House committee of the Clearing House Association of the Banks of Philadelphia, appellants, *v.* Robert M. Yardley, receiver of the Keystone National bank, No. 12, March term, 1894, on file and now remaining among the records of the said court in my office.

Seal United States Circuit Court of Appeals, Third Circuit.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this second day of July, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

WM. V. WILLIAMSON,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

[Endorsed:] No. —. —— term, 189–. United States circuit court of appeals, third circuit. Certified copy.

Endorsed on cover: Case No. 15,944. U. S. circuit court of appeals, third circuit. Term No., 296. Robert M. Yardley, receiver of the Keystone National bank, appellant, *vs.* George Philler, president First National bank, *et al.*, being Clearing House committee, &c. Filed July 2nd, 1895.

167
FILED
AUG 27 1896

No. 296. October Term, 1896.

167-344

Supreme Court of the United States.

Robert M. Yardley, Receiver of the Keystone National Bank, Appellant,

vs.

George Philler, President First National Bank *et al.*, being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR APPELLANT.

SILAS W. PETTIT,
For Appellant.

Allen, Lane & Scott, Prs., Phila.

SUPREME COURT OF THE UNITED STATES.

Robert M. Yardley, Receiver of the Keystone National Bank,

vs.

George Philler, President First National Bank, et al., *being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia.*

October Term, 1896.

No. 296

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR APPELLANT.

STATEMENT OF THE CASE.

This case is on bill in equity filed in February, 1892, by Robert M. Yardley, Receiver of the Keystone National Bank, against George Philler *et al.*, being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia, to recover the sum of $70,005.46, being the amount of checks on other banks theretofore deposited with the Keystone National Bank, and of which it was the holder and owner, and to the proceeds of which it was entitled, but which said proceeds were paid to the manager of the Clearing House Association after the insolvency of said Keystone National Bank, and after

it had been taken possession of and closed by the Bank Examiner; and thereupon, by order and direction of said defendants, with full knowledge of said insolvency, were appropriated to the payment of certain debts of the Keystone Bank, principally to the Clearing House Association, not legally entitled to any preference; which said payment, as is claimed by the appellant and found by the Circuit Court of the United States, was in violation of the statute and in violation also of the rules of the said Clearing House Association itself.

The only evidence in the case is the testimony of Mr. Boyd, the manager of the Clearing House Association, and letters and accounts, &c., produced by him; and although it is plain that the result of what was done was that the Clearing House Committee did receive and appropriate said sum of $70,005.46 to its own use and to the debts due its own members, contrary to the statute and to the rules of the association, yet as the precise method in which this was accomplished is enveloped in the peculiar verbiage which distinguishes bankers' transactions, it is perhaps best to state it somewhat at length.

The Clearing House Association.

The Clearing House Association is a voluntary unincorporated association of the national banks of the city of Philadelphia, established for the purpose of effecting the exchanges between themselves more conveniently than by each of the forty-three banks sending to the other forty-two to exchange the checks and drafts on each other received in the course of business.

This—the ordinary function of the Clearing House Association—is effected in this way: At 8.30 A. M. of each business day each bank sends to the common meeting room two clerks, a package clerk and a settling clerk. The package clerk has with him the checks, notes, drafts, bills of exchange, and other commercial paper belonging to his bank and drawn on or payable at or by the other banks of the association, and called for brevity the ex-

changes, done up in separate envelopes; which rule 3 (Record, page 91) requires to be "Well gummed and sealed with wax and indorsed with ink or indelible pencil," and the amount indorsed thereon is by said rule made the basis of the settlement.

When the time arrives, at a signal from the manager, who presides over the meeting, each settling clerk seats himself in his appropriate place, and the package clerks commence their walk around, delivering to the settling clerk of each bank the package of exchanges due to his bank by that bank, and takes a receipt therefor on a sheet, in form of Exhibit No. 11 (Record, page 71), while the settling clerk receives from the package clerks of all the other banks the exchanges due to them respectively by his bank and enters the same on a sheet in form Exhibit No. 13. (Record, page 73).

Upon the completion of this exchange, and from the sheets so made up, the manager of the Clearing House makes up a statement of settlement in form Exhibit 3 (Record, page 64), wherein each bank is charged with the aggregate amount of the packages delivered to it and is credited with the aggregate amount of the packages delivered by it (which aggregate amounts must necessarily balance each other), and the balance is charged or credited to it, as the case may be; whereupon the clerks return to their respective banks and report the amount due to or by it to effect the settlement, and at or before twelve o'clock on that day the debtor banks pay to the manager in gold certificates of the United States Treasury, gold certificates of the Clearing House Association (which are issued against gold actually deposited with it for that purpose, under article XIII. of its constitution, Record, page 88), or legal tender notes, which certificates or notes are deposited by the manager with that bank in which he keeps his account, and he then pays to the creditor banks the amount so received. Obviously, in regular course the accounts must thus balance at each settlement and the manager receive from the debtor banks the exact sum he distributes among the creditor banks.

Another exchange is made at 11.30 o'clock A. M., called

the runners' exchange, but the main business is done at the morning exchange, already described.

In respect to this settlement the constitution of the association provides that errors in the exchanges and claims arising therefrom must be adjusted between the banks who are parties to it, and that the association shall not be liable therefor (Record, page 87), and also provides that:—

> "Article XIV. The responsibility of the association for such exchanges is strictly limited to the faithful distribution by the manager among the creditor banks for the time being of the sums actually received by him, and should any losses occur while the said *balances are in the custody* of the manager, they shall be borne and paid by the associated banks in the same proportion as the expenses."

The manager's salary and incidental expenses of maintaining the Clearing House are also so borne and paid. (Record, page 88.)

In case of default by any bank in payment of the balance for which it shall be debtor upon the settlement, the constitution of the association provides:—

> "Article XI. Should any of the associated banks fail to appear at the Clearing House at the proper hour prepared to pay the balance against it, the amount of that balance shall be immediately furnished to the Clearing House by the several banks exchanging at that establishment with the defaulting bank, in proportion to their respective balances against that bank, resulting from the exchanges of that day, and the manager shall make requisitions accordingly, so that the general settlement may be accomplished with as little delay as possible. The respective amounts so furnished the Clearing House on account of the defaulting bank will, of course, constitute claims on the part of the several responding banks against that bank:
>
> "*Provided*, That the amount of the due bill given by the defaulting bank, in settlement of its debit balance in the runners' exchange of the previous day, and deposited by the Clearing House in its depository bank, shall be deducted from the total charge of such bank, and shall be the first claim against the securities deposited by the defaulting bank, under Article XVII." (Record, page 87.)

As security to protect the banks as against each other during the short interval between the exchange of the packages and actual payment, each bank is required to deposit collateral as follows:—

> "Article XVII. Each bank, member of the Clearing House Association, shall deposit securities with the Clearing House Committee as *collateral for their daily settlement* in the following percentage or assessment on capital. (Here follows the statement of same.)
>
> "The committee shall apply the deposit of any defaulting bank to the payment of the balance due by such bank at the Clearing House, or to the reimbursement, *pro rata*, of the several banks furnishing said balance under article XI., and the surplus, if any, shall be held as collateral security for other indebtedness to members of this association." (Record, page 89.)

It thus appears that in effecting the exchanges no bank pays or receives anything directly to or from any other bank, but becomes debtor or creditor of the Clearing House Association, and pays to or receives from it the balance which is due by or to it.

The Keystone Bank deposited the security for its daily balances required by the constitution, but on December 30th, 1890, these securities were surrendered back to it and redelivered to the Clearing House Committee as security for Clearing House loan certificates which had been theretofore issued by said committee to said bank; and, therefore, as its debtor balances were unsecured, it was agreed that it should not take away the packages delivered to it at the Clearing House until it should actually pay the amount which might be due by it upon the settlement. This arrangement applied to the Keystone Bank only, and to none other. (Record, pages 20, 31, 43-45, 66-67; Exhibit No. 5, page 55; No. 15, page 74.)

Clearing House Loan Certificates.

Another extraordinary function of the Clearing House is to lend its own certificates for the purpose of making settlements; thereby, in times of financial stringency, re-

lieving the associate banks from actually delivering gold or legal tenders, which they otherwise must do, and also enabling them to utilize the commercial paper which they have acquired by discount in making settlement of their daily balances.

The regulations concerning the issue of these Clearing House loan certificates are to be found set out at length in the answer (Record, page 10), and as Exhibit No. 22 (Record, page 80), and are, in brief, that the Clearing House Committee may lend to any associate bank the certificates of the Clearing House, on which the borrowing bank pays six per cent. interest, and take as security therefor bills receivable or other securities satisfactory to the committee; and that these Clearing House certificates are to be received by the creditor banks in payment of the balances due them by the debtor banks at the daily settlement; and furnish a fourth class of certificates in which payment of balances may be made in addition to the three classes already mentioned.

In the exercise of this function the Clearing House Association engages in the business of a bank of discount and becomes creditor of the banks borrowing the certificates like any other banker lending money, or the evidence of it, to his customer upon collateral security; and the expense of the arrangement and the loss, if any, "cansed by the non-payment of loan certificates, shall be assessed by the committee upon all the banks in the ratio of capital." (Record, page 81, at top.)

On March 20th, 1891, the Keystone Bank was debtor to the Clearing House in the sum of $335,000 for such loan certificates, and for which it had deposited as security $575,383.79 of commercial paper and the $100,000 five per cent. bonds of the Baltimore Traction Company which are claimed in the bill.

This claim was abandoned at the hearing, but it is proper to explain that it was presented because all the papers were in the possession of the Clearing House, and the Receiver could get no reliable information about it. The receipt given for those bonds (Exhibit No. 17, Record,

pages 75-49) was sent by the Bank Examiner to the chairman of the Clearing House (Record, page 69) before the Receiver took possession, and was produced in evidence by the manager of the Clearing House and its possession explained by him. (Record, pages 49-51-60.)

THE TRANSACTION OUT OF WHICH THIS CLAIM ARISES.

At the clearing held at 8.30 o'clock A. M. on March 20th, 1891, the two clerks of the Keystone National Bank met at the Clearing House the clerks of the other forty banks belonging thereto, and the package clerk delivered the packages belonging to his bank and containing checks, drafts, &c., made payable to it, to the settling clerks of the banks on which the same were drawn respectively, amounting in the aggregate to $70,005.46, taking their receipts therefor (Exhibit No. 11, Record, page 71), which said packages said settling clerks carried away and delivered to their banks respectively; and thereby the Keystone Bank became a creditor of said banks in the sum of $70,005.46, payable to it through the Clearing House at twelve o'clock of that day.

At the same time the package clerks of the other banks presented to the settling clerk of the Keystone Bank packages of exchanges belonging to their banks respectively, amounting in the aggregate to $117,035.21, a list of which is found in Exhibit No. 14 (Record, page 73), and for which said sum of $117,035.21 the Keystone Bank became debtor to said other banks in the respective sums therein set forth, payable by it to them through the Clearing House at 12 o'clock M. of that day upon the delivery of the said packages, but not otherwise.

This settlement was reported to the manager of the Clearing House, and found to be correct; and thereby the account of the Keystone National Bank with the Clearing House stood as follows:—

Keystone National Bank, Dr.	$117,035 21
" " " Cr.	70,005 46
Leaving the Keystone National Bank a net debtor to the Clearing House for	$47,029 75

(Exhibit No. 3, page 64; the Keystone National Bank being No. 31 on the list.)

Pursuant to the plan followed after the security given for its balances had been transferred to its loan certificate account, the Keystone Bank, by its settling clerk, on March 20th, 1891, left with the manager of the Clearing House the packages containing the $117,035.21, to be retained until it should before 12 o'clock M. of that day pay him said $47,029.75 for the benefit of the creditor banks at that day's settlement.

The clerks of the Keystone Bank returned to that bank and reported the balance due by it, but found the Bank Examiner already in possession, and that the bank had ceased to do business. Information of this fact was received by Mr. Boyd, the manager of the Clearing House, before 10.30 o'clock, and he immediately called the Clearing House Committee together and notified them of the failure, whereupon he was instructed to return the packages for $117,035.21 to the banks to which they belonged, and demand from them the payment to him of a like sum of money, and then complete the day's settlement.

This is described by Mr. Boyd, the manager, as follows:—

"Q. When did you first hear of it? (The closing of the Keystone Bank.)

"A. Somewhere about ten or half-past ten o'clock that morning; on Friday, the 20th of March, 1891.

"Q. After your knowledge of the failure did you consult with any one as to what you should do with the packages of checks amounting to $117,035.21?

"A. The Clearing House Committee were called together, and I received my instructions from them.

"Q. About what time of the day?

"A. About somewhere around half-past ten, I suppose. As soon as I received the news I notified the committee.

"Q. You notified them that the Keystone Bank had closed its doors?

"A. That the Keystone Bank had closed its doors.

"Q. Then the committee met?

"A. Then the committee met.

"Q. And then they gave you your instructions?

"A. Exactly.

* * * * * * *

"Q. From what member of the committee did you receive these instructions?

"A. I received them in a general way that morning; I was in and out of the room all the time. The gentlemen were sitting around the table. It was 'Mr. Boyd this' and 'Mr. Boyd that.' I was there to carry out the instructions I received without stopping to make record of who told me to do this and that.

"Q. The only thing that required any special action was the matter of the Keystone Bank, was it not?

"A. I think it was at that time.

"Q. What instructions did they give you?

"A. They gave me instructions that I carried out on that paper.

"Q. State as near as you can how they gave you instructions. They did not give them to you in bookkeepers' language? How did they give you these instructions?

"A. They were aware that they had the exchanges there of the Keystone Bank; that we held the exchanges of the Keystone Bank in custody in sealed packages, and the orders were to call on the banks and make those packages good by sending the money to the Clearing House; and then the money was received later in the day and the distribution was made as stated there, or the settlement was made.

* * * * * * *

"A. Called upon them to redeem the amount which they had been credited with in settlement of the account of checks drawn on the Keystone Bank. We called the amount sent to the Keystone Bank—we say, redeem the packages sent to the Keystone Bank.

"Q. And which they had been credited with in the balance sheet, had they not?

"A. They had."

(Record, pages 28, 29.)

The net result of this was that the Clearing House collected the $70,005.46 belonging to the Keystone Bank; or, as the witness states it:—

"Q. And the fact of making the settlement in that form was to get the benefit of the $70,005.46, was it not?

"A. The benefit was gotten; there is no doubt of that."

(Record, page 35.)

"Q. You adopted this way so as to make good the balance due you?

"A. The balance due the banks. Well, the balance due the Clearing House."

(Record, page 57.)

This money, which thus came into their hands by reason of its having been sent by the Keystone Bank for the specific purpose of being applied to the payment of its depositors on their checks, the defendants, acting as the Clearing House Committee, diverted from that purpose and applied to the payment of debts due to the Clearing House and other banks, as per statement Exhibit A (Record, page 24), as is clearly stated by the witness, as follows:—

> "A. The Keystone Bank got the benefit of it by *our committee paying* $70,005.46 of the Keystone's indebtedness. It also released that amount of collateral from any indebtedness to the Clearing House Committee."

ARGUMENT.

From the foregoing statement of the case it will be seen that on March 20th, 1891, the Keystone National Bank sent to the Clearing House exchanges belonging to it amounting to $70,005.46, for the purpose and with direction to apply the same to the payment of checks drawn against it by its depositors, by exchanging the one for the other.

This exchange was not in fact made, but instead thereof the exchanges against the Keystone Bank were withdrawn

(and charged back against the parties to whose credit they stood with the banks holding them), and the settlement was completed as though no exchanges had been presented at all against the Keystone Bank, with the result that it stood creditor in the whole sum of the exchanges presented by it—as though no packages had been presented against the Keystone Bank but it had presented packages amounting to $70,005.46, and thereby became entitled to receive that sum from the Clearing House upon completion of the settlement—and the settlement having been thus completed, the Clearing House Committee, by its manager, did in fact have in its physical custody said sum of $70,005.46, and did apply the same to its own benefit. That this was the purpose, intent, and effect of the settlement made is clearly shown by the evidence, *inter alia*, as follows:—

"Q. The due bills were obligations due to the banks, were they not?

"A. Yes, sir.

"Q. But the checks presented by the banks having been returned to the banks, could be charged back by them against their customers, could they not?

"A. They could.

"Q. Was that the reason of the distinction?

"A. As these could not be charged back, we did this to protect the banks. This was done to protect the banks that held them.

"Q. This was done for the purpose of protecting the banks that held them?

"A. Yes, sir."

(Record, page 33.)

The questions thus presented seem to be these:—

I. Had the Clearing House Committee the right to apply the said sum of $70,005.46 to the payment of its own debt and that of its members?

II. Are the defendants liable in this suit?

III. Can the bill filed be sustained, or must plaintiff sue at law?

I. *Had the Clearing House Committee the right to apply the said sum of $70,005.46 to the payment of its own debt and that of its members?*

That a debtor has, except when prohibited by statute, the absolute right to direct the appropriation of any payments he may make, and that the payee has no right to apply such payments to any ~~other~~ purpose or account other than that which the debtor has designated, are propositions not likely to be disputed; and it is contended that there is no reason shown in the evidence which would exclude the Keystone Bank from their operation. If, notwithstanding the statute, on March 20th, 1891, and before it was closed by order of the Comptroller of the Currency, the Keystone Bank had any right to pay any of its debts, it is quite clear that it did appropriate the proceeds of $70,005.46 of checks, &c., held and owned by it to the payment of checks drawn on it by its depositors; and although it cannot be denied that the banks which held those checks could, for any or no reason, refuse to exchange the checks, the consequence of such refusal was that the Keystone Bank, or its Receiver, was entitled to receive back the checks or the proceeds thereof which it owned and had tendered in payment of checks drawn on it.

Divested of the mechanism of the Clearing House clearing and of the verbiage necessary to describe it, the case stands as though the transaction had been made with Mr. Boyd for his committee; and, if so, there can be no pretense but that he must either accept the $70,005.46 in part payment of the $117,035.21 and deliver the same to the Keystone Bank as provided by article XI., or else return the $70,005.46—and that he could not refuse to deliver the $117,035.21 and yet keep the $70,005.46 for his own benefit. Indeed, the attempt made in the answer and in the testimony of the Clearing House manager to conceal the real source from which the $70,005.46 arose,

and which seems to have misled two of the judges of the Court of Appeals, shows clearly that the defendants themselves felt that if the real nature of the transaction should be evolved from the seeming confusion of the Clearing House settlement, there could be and was no answer to the plaintiff's case.

The retention of the money by the defendants cannot be justified upon the ground of a banker's lien.

> "It is familiar law that a banker has a lien upon all funds and securities in his possession, deposited with him in the usual course of business by a customer, to facilitate the financial transactions contemplated between them, which extends to the payment of any balance on general account. The lien arises from the implied understanding of the parties that credit is to be given, in the course of dealings between them, by the banker to the customer upon the faith of the securities. *It is equally familiar law that the lien does not exist when the securities have been deposited for a special purpose*, or for the payment of a particular loan; *and where they are delivered specifically to protect the banker in a particular transaction*, or series of transactions, *he has no lien upon them for any other purpose*, and cannot assert one for any other indebtedness, whether arising upon general account or otherwise."
>
> Per Wallace, J., Armstrong *vs.* Chem. Nat. Bank, 41 Fed. Rep., 234-239.

> "Here, then, is the true principle upon which these, as well as all other bankers' liens, must be sustained, if at all. There must be a credit given upon the securities, either in possession or in expectancy."
>
> Russell vs. Haddock, 3 Gillman, 233-238.

> "It (a banker's lien) does not arise upon securities accidentally in the possession of the bank, or not in its possession in the course of its business as such, nor where the securities are in its hands under circumstances, or where there is a particular mode of dealing inconsistent with such general lien."
>
> Reynes vs. Dumont, 130 U. S., 354-390.

Besides all which it stands admitted that the settlement was not made in accordance with the constitution of the Clearing House Association; and it cannot, therefore, be pretended that a bankers' lien can be claimed upon funds put in its possession under the terms of that constitution.

Examination of the answer itself, and of the testimony, will show that the defendants did not attempt to rest their claim to retain the money upon the ground stated by the court below, but did seek to interpose as a defense article II. of the constitution (Answer, section 3; Record, page 8, at foot; article II. of constitution, Exhibit 25, Record, pages 84-36), which has no possible relation to the case; and the provisions relating to the disposition to be made of the securities pledged for Clearing House ~~loan certificates~~, which likewise does not apply, because no such security existed on March 20th, 1891.

daily balances

As has already been seen, the proceeds of the $70,005.46 of checks belonging to the Keystone Bank came into the possession of the defendant after the doors of the Keystone Bank were shut by order of the Comptroller, and it was with full knowledge of that fact that the defendants took possession of said proceeds of said checks and applied them to the benefit of their association and its members. This seems to be prohibited by the statute.

The United States Revised Statutes, section 5242, forbids:—

"All transfers of * * * evidences of debt, owing to any national banking association * * * made after the commission of an act of insolvency."

And it follows, therefore, that even if the Keystone Bank was willing that the defendant should make the application of the proceeds of the checks which they did make, and may be deemed to have assented to or ratified it, the transaction was forbidden by the statute and therefore void; and it is of this that the learned circuit judge who decided the case in the first instance said:—

"The following conclusions inevitably result: The disposition which was made of the surplus of the $70,005.46

> was not warranted by the agreement, or by the practice and course of dealing of the parties. The checks from which that surplus was realized were deposited for a single special purpose, and therefore for no other object was there, or could there be, any right, setoff, equity, or lien attached to them; and the application of any part of their proceeds to the payment of any indebtedness of the Keystone Bank, other than the balance of $47,029.75, was violative of law in that it was a disposition of assets of an insolvent bank so as to work a preference, and with the manifest intention of producing that result." (Record, page 106.)

The judgment of the Circuit Court of Appeals seems to be based upon the supposition that the Receiver's claim rests upon a right of rescission in the Keystone Bank, and claims that—

> "the morning exchange had been already consummated. The packages of exchanges on the one side and the other had been delivered and receipted for. The exchange itself was an accomplished fact," &c. (Record, page 116, at top.)

It is respectfully submitted that this is clearly erroneous. The Keystone Bank sent $70,005.46 to pay its debt at the Clearing House. It turned out that the Clearing House had against it checks amounting to $117,035.41, and therefore required $47,029.75 to make good the difference, and it kept the $70,005.46 and also held back the $117,035.41 until the balance should be paid it. The balance was not paid it. Under article XI. of its constitution (Record, page 87) it ought thereupon to have applied the $70,005.46 to the $117,035.41 *pro rata*, but this it did not do. On the contrary, it applied the $70,005.46 to another debt and, in effect, retained the $117,035.41 also, for by returning these checks to the depositors thereof, their claims on their deposit accounts against the Keystone Bank were preserved for the full amount thereof.

The reasoning of the learned Court of Appeals and the concurring opinion is evidently based upon the idea that the $70,005.46 was not, in fact, the money of the Keystone Bank, but was in some mysterious way a voluntary contribution made by the other banks of the association.

It is no answer to this to say that the money was, in fact, applied to the payment of the just debts of the Keystone Bank. The law does not permit a creditor, however meritorious, to seize the property of his debtor except by legal process; and, especially, the statute forbids this in the case of a national bank—it prohibits the bank from making any such application of its money as was made in this case—and,

> "if the Keystone Bank itself would not because of its insolvency have been permitted to make this use of this surplus, then certainly the Clearing House Association, with knowledge of the insolvency, could not lawfully so apply it." (Dallas, C. J., Record, page 105.)

II. *Are the defendants liable to this suit?*

That the defendants did directly authorize and cause to be made the application of the Keystone Bank's money which was made in this case is directly and positively proven by the testimony of Mr. Boyd, the manager, who says that what he did he did by the express order of the defendants composing the committee of the Clearing House. (Record, pages 24-28-29-59.)

It is intimated that there is some hardship in this; that the Clearing House Association is an unincorporated body, and that the committee serve without pay, &c.; but the conclusive answer is found in the allegation of the bill and the admission of the answer in respect to this particular point.

Bill, section 4, wherein, after reciting the names of the defendants, it is averred as follows:—

> "And together form and constitute the Clearing House Committee of the Clearing House Association of the banks of Philadelphia, *and sue and are sued as such;* and under the articles of association adopted by and governing said association was given and intrusted with the entire charge, care, management, and control of the Clearing House affairs and transactions and the custody and control of the funds and securities belonging to or deposited with it." (Record, page 3.)

To this the defendants answer:—

> "4. We admit the averments contained in the fourth paragraph of the bill of complaint."

III. *Can the bill filed be sustained, or must the plaintiff sue at law?*

It is to be remembered that the Receiver had and could have no knowledge of the transaction of March 20th, 1891, except from the settling sheet of the Clearing House manager (Exhibit 3, Record, page 364) and the sheets of the clerks who attended at the Clearing House on that day (Exhibit 11, page 71; Exhibit 14, page 73), all three of which were in the possession of the defendants. Upon the taking of the testimony the defendant called on the plaintiff to produce Exhibits 11 and 14 (Record, pages 41, 42); but finally Mr. Boyd, the manager, produced them and explained his possession of them by stating that he had sent for them on March 20th, 1891, *for the purpose of making the settlement, and that he had and could get no other data from which to make it.* (Record, page 57.)

And the bill further averred:—

> "And your orator further saith that he has no knowledge or means of knowledge of the precise items included in the package of checks, drafts, &c., delivered to said Clearing House Committee on said twentieth day of March and retained by them as aforesaid, nor the exact total of the same, and that he has no adequate remedy at law." (Bill, section 12; Record, page 6.)

Wherefore the plaintiff prayed discovery, as well as an accounting.

> "In many cases it has been held that where a party has a just title to come into equity for a discovery and obtains it, the court will go on and give him the proper relief, and not turn him round to the expense and inconvenience of a double suit at law. The jurisdiction having once rightfully attached, it shall be made effectual for the purposes of complete relief. And it has accordingly been laid down by elementary writers of high reputation

that 'the court, having acquired cognizance of the suit for the purpose of discovery, will entertain it for the purpose of relief in most cases of fraud, account, accident, and mistake.' The ground is stated to be the propriety of preventing a multiplicity of suits; a ground of itself quite reasonable and sufficient to justify the relief, and one upon which courts of equity act, as we shall presently see, as a distinct ground of original jurisdiction."

Story, Eq. Jur., section 64 K.

And it is now too late to raise this question.

"An objection that the remedy at law was plain and adequate should be taken at the earliest opportunity. Yet neither consent nor negligence will confer jurisdiction in equity where none really exists, and the court may at any stage of the case entertain such objection or dismiss the bill *mero motu*. Yet there are cases where, if the objection of want of jurisdiction because of an adequate remedy at law be not taken in the Circuit Court and be for the first time presented upon appeal, the court will not feel itself obliged to entertain an objection coming so late, especially if the subject matter of the suit is of a class over which the Court of Chancery has jurisdiction and it is competent for the court to grant the relief sought."

Reynolds vs. Watkins, 60 Fed. Rep., 824, 825.

The expression above quoted, although from the decision of a subordinate court, has been chosen because it so clearly expresses the rule deducible from the decisions of this court.

Tyler vs. Savage, 143 U. S., 79;
Reynes vs. Dumont, 130 U. S., 355;
Kilborne vs. Sunderland, 130 U. S., 505.

In conclusion. Upon the whole case, therefore, it appears that the Keystone Bank having put within the grasp of the defendants certain checks to be applied to a certain purpose, said defendants, without the authority of the bank, and contrary to the prohibition of the statute, did, in fact and substance, realize upon said checks and apply

the proceeds thereof to another and different purpose than that for which they had been delivered to it; and it is respectfully submitted that it makes no difference whether the money so obtained was applied in payment of the debts of the Keystone Bank or not, and that the Keystone Bank and its Receiver have the right to have this money so misapplied returned to it or him and brought within the course of distribution among its general creditors, as prescribed by statute and by equity.

SILAS W. PETTIT,
For Appellant.

167-344

No. 296. October Term, 1895.

APR 6 1897
JAMES H. MCKENNEY,
CLERK.

Supreme Court of the United States.

Robert M. Yardley, Receiver of the Keystone National Bank, Appellant,

vs.

George Philler, Benjamin B. Comegys, Henry C. Stroup, Jacob Naylor, John H. Michener, George M. Troutman and James V. Watson, being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia, Appellees.

BRIEF FOR APPELLEES.

A. T. FREEDLEY,
JOHN G. JOHNSON,
For Appellees.

Allen, Lane & Scott, Prs., Phila.

SUPREME COURT OF THE UNITED STATES.

No. 296. Of October Term, 1896.

Robert M. Yardley, Receiver of the Keystone National Bank, Appellant,

vs.

George Philler et al., *being the Clearing House Committee of the Clearing House Association of the Banks of Philadelphia.*

BRIEF FOR APPELLEES.

STATEMENT OF THE CASE.

The case arose on a bill filed in February, 1892, by Robert M. Yardley, Receiver of the Keystone Bank, against the appellees as a committee of the Clearing House Association of the banks of Philadelphia.

The bill in this case is not filed against the Clearing House Association, nor against the banks which compose the association. It is filed against the Clearing House Committee, which is a voluntary committee, serving without compensation.

The Clearing House Association is a voluntary, unincorporated association of the national banks in the city of Philadelphia. It is established simply for purposes of convenience,

and its object is to enable the banks to effect their exchanges between themselves at some common meeting room rather than by sending a multitude of clerks and runners to each separate bank. In the common meeting room, which is styled the Clearing House, all exchanges are made directly between the banks themselves, and the clerk of the sending bank directly delivers to the clerk of the receiving bank sealed packages supposed to contain drafts and checks upon the receiving bank, and these sealed packages are never opened in the Clearing House room. Receipts are given directly between the sending and receiving banks. Neither the Clearing House Committee nor the manager know anything about the packages, and no list of packages exchanged is ever given to them.

After the exchanges are all made directly between the banks themselves the gross totals are reported to the Clearing House manager. From this the manager prepares the sheet of differences to be adjusted and settled amongst the various banks. This is the only record reported to or kept by the Clearing House clerks. Upon this record the debtor banks settle the amount due the creditor banks by paying the same to the Clearing House manager, and the latter immediately distributes it to and amongst the creditor banks.

There are two daily exchanges between the banks—one at 8.30 A. M., known as the morning exchange, and one at 11.30 A. M., known as the runners' exchange. Balances due at the morning exchange are paid in cash before 12 o'clock; balances due at the runners' exchange are paid by runners' due bill, which is deposited by the manager of the Clearing House in the depository bank and paid out of the exchanges of the debtor bank at the next morning exchange.

Throughout the entire transaction the settlements are made directly between the banks themselves, and the Clearing House manager acts as the agent for the debtor and creditor banks, and does not act in any manner as agent for the Clearing House Committee. Nor has the Clearing House Committee nor the association at large anything whatever to do with these exchanges or the result of them.

On March 20th, 1891, the runner of the Keystone Bank

appeared at the Clearing House room at 8.30 A. M. (being the hour the morning exchanges are made) with sealed envelopes purporting to contain $70,005.46 of checks and drafts against other banks. This runner delivered this $70,005.46 directly to the clerks of the receiving banks, and received specific receipts therefor from the various receiving banks. Other banks presented to the Keystone Bank divers packages alleged to contain $117,035.21 of checks and drafts against the Keystone Bank, and received from the Keystone Bank receipts therefor. This made a balance of $47,029.75 on that morning's exchange against the Keystone Bank. After receiving from the other banks the packages alleged to contain $117,035.21, the Keystone Bank clerk left them in the custody of the manager of the Clearing House Association until the Keystone Bank should pay the $47,029.75 difference.

The reason the packages were left by the Keystone Bank in the custody of the Clearing House manager was this: Under article 17 of the Clearing House Rules all banks were required to deposit collateral security for the payment of their daily balances, but in December, 1890, the Keystone Bank requested that all security held under this article for the payment of its daily balances should be transferred to what was known as the loan certificate account, so that the Keystone Bank could receive further advances upon this security. This was done and the Keystone Bank received large advances thereon.

After this date the sole security for the payment of the daily balances due at the morning exchange was an agreement of the Keystone Bank that its messenger, after receiving the packages from the creditor banks, should leave these packages with the Clearing House manager as security that the debtor balance due on that settlement should be paid by the Keystone Bank in cash before twelve o'clock on that day; and this agreement was acted on daily from the date it was made until the suspension of the bank.

The Keystone Bank did not pay the $47,029.75 before twelve o'clock on that day. It has never paid it nor offered to do so. Later in the day it closed its doors.

The packages contained commercial paper. Prompt action was necessary.

The Clearing House manager thereupon notified all the banks who had presented the $117,035.21 that they must redeem these packages by paying cash therefor, and the banks accordingly paid $117,035.21 in cash and withdrew the packages which they formerly held against the Keystone Bank. There is no evidence that any of the items in these packages, amounting to $117,035.21, were ever presented against the Keystone Bank.

At this time the Keystone Bank was indebted to the Clearing House Association for daily balances due on March 19th and March 20th, 1891, and also to divers banks members of the association, and also to the Clearing House Committee in the sum of $335,000.

This sum of $117,035.21, composed of money put up by other banks, was applied as follows:—

To balance due by Keystone Bank on its A. M. exchange with Clearing House on March 20th, 1891	$47,029 75

This left $70,005.46 as a general credit to the Keystone Bank. This credit arose by reason of the other banks contributing their own money. That sum of $70,005.46 was applied as follows:—

To balance due by Keystone Bank on its runners' exchange with Clearing House on March 19th, 1891	$23,031 34
To balance due by Keystone Bank with Clearing House on its A. M. exchange on March 19th, 1891	359 18
To payment of due bills issued by the Keystone National Bank on March 19th, 1891, payable in exchanges of March 20th, 1891, and held by divers banks	17,806 84
To partial repayment of indebtedness of Keystone Bank to Clearing House Committee	28,808 10
	$70,005 46

The first above-mentioned three items were the amounts which the Keystone Bank owed on its exchanges with the Clearing House on March 20th and March 19th, 1891. These amounts are admitted by appellant's bill to be a proper payment, as by the second prayer appellant prays for a decree "after the deduction of any daily balances remaining due and unpaid."

The payment of the $17,806.84 of duebills to the banks above mentioned was in pursuance of the terms of the duebills, and were on their face expressly "payable only in the exchanges through the Clearing House the day after issue." The duebills were given by the Keystone Bank for cash, and represented a cash transaction of the previous day for which the Keystone Bank had then received full value, and were an assignment of so much of the Keystone's credit of the following day as would be necessary to pay the same, and the object of giving the due bills was to enable the Keystone Bank by giving them to avoid paying cash over the counter.

The balance, viz., $28,808.10, was applied in partial payment of the indebtedness of the Keystone Bank for loans to the Keystone Bank made by the Clearing House Committee, which indebtedness at that time amounted to the sum of $335,000. This $28,808.10 is the only amount which the appellees received.

The entire $70,005.46 was applied to the payment of the debts of the Keystone Bank, and that bank received the full benefit and value thereof.

The Receiver also obtains the full benefit of this payment, for it enables him to receive $70,005.46 of collaterals held by appellees which would otherwise have been applicable to the payment of this indebtedness of the Keystone Bank.

Nothing was done in this matter until February, 1892, when the Receiver of the Keystone Bank filed this bill to recover from the appellees individually the sum of $70,005.46, or so much thereof as remained after deducting therefrom any unpaid daily balance due by the Keystone Bank, with interest from March 20th, 1891, upon the ground that the transaction amounted to an unlawful preference.

ARGUMENT.

The Clearing House Association is a voluntary, unincorporated association of the national banks in the city of Philadelphia. Its object is to enable the banks to effect their exchanges between themselves at some common meeting room rather than by sending a multitude of clerks and runners to each separate bank. This bill is filed against seven individual defendants, who act as the committee to manage such affairs of the association as require management. The bill is not filed against the Clearing House Association, nor against the banks which compose the association. The bill was filed to recover:—

1. $100,000 of Baltimore Traction Company bonds, which the bill alleges were received by the committee defendants as collateral security for the payment by the Keystone Bank of its daily balances due to other banks, members of the Clearing House Association; and

2. To recover the sum of $70,005.46, or so much thereof as remains after deducting therefrom the daily balances due by the Keystone Bank to the Clearing House.

I. As to the $100,000 Baltimore Traction Company bonds.

The allegations of the bill were denied by the answer and were not supported by any evidence. This claim was abandoned.

II. As to the $70,005.46.

This is an attempt to recover from seven individual defendants, acting as a committee, the sum of $70,005.46, which they never received and for which they have no responsibility. The Clearing House Association is a voluntary, unincorporated association, established simply for the purpose of convenience; and the Clearing House Committee is a voluntary committee, serving without compensation. The main object of the association is to afford a common meeting place in which the banks, members of the association, can make their exchanges directly between themselves, instead of being compelled to send forty clerks and runners to forty dif-

ferent banks. In the absence of such a common meeting place each one of the forty banks composing the association would be compelled to send runners and clerks to each of the other thirty-nine banks scattered miles apart, to collect from each individual bank cash. To obviate this annoyance, inconvenience, danger by loss, theft, or otherwise, shortly before the close of the last century the bankers in London, by common consent, met in a tavern or coffee house, which was changed from time to time, and made their exchanges between themselves. No record of these exchanges was then kept, but as time went on the value of such fiscal statistics was perceived, and a room was hired where the bankers met and a record of their gross totals was retained. This was the origin of Clearing House Associations. In this common meeting place, which is styled the Clearing House, all exchanges are made directly between the banks themselves, and the clerk of the sending bank directly delivers to the clerk of the receiving bank sealed packages supposed to contain drafts and checks upon the receiving bank, and these sealed packages are never opened in the Clearing House room. Receipts are given directly between the sending and receiving banks. Neither the Clearing House Committee nor the manager know anything about the packages, and no list of packages exchanged is ever given to them. The manager is simply present to preserve order. Any errors in the packages are rectified solely between the sending and receiving banks, and not reported to the Clearing House manager. If the clerk of any bank appears too late at the Clearing House room, such bank makes its exchanges directly with all the other banks as if there was no Clearing House room. (Record, pages 34–37, 47, 23, 15.)

After the exchanges are all made the gross totals are reported to the Clearing House manager. (See form of slip returned, Exhibit 12, Record, page 72.) From this the manager prepares the sheet of differences to be adjusted and settled amongst the various banks. This is the only record reported to or kept by the Clearing House clerks. Upon this record the debtor banks settle the amount due the creditor banks by paying the same in cash or its equivalent to the

Clearing House manager before twelve o'clock, and the latter immediately distributes it to and amongst the creditor banks.

Throughout the entire transaction the settlements are made directly between the banks themselves, and the Clearing House manager acts as the agent for the debtor and creditor banks, and does not act in any manner as agent for the Clearing House Committee. Nor has the Clearing House Committee nor the association at large anything whatever to do with these exchanges or the result of them.

This clearly appears by the Constitution and Rules and Regulations of the Clearing House. (Record, page 84. See Constitution, articles 2, 10, 12, and Rules and Regulations 3, 4, 5, and 6.)

Article 2 of the Constitution of the Clearing House Association (Record, page 84) also provides that—

> "The responsibility of the association for exchanges is strictly limited to the faithful distribution by the manager amongst the creditor banks for the time being of the sums actually received by him."

The court will find the functions and duties of the Philadelphia Clearing House accurately defined in—

Philler *vs.* Patterson, 168 Pa. St. Rep., 468.

And in the opinion of Judge Acheson in this case (Record, pages 113–115), and the practice and machinery of Clearing House associations generally will be found fully stated in—

Bolles on Practical Banking, 217–278;
Gibbons' Banks of New York, 292–342.

And have been further explained and judicially recognized—

In England:—

Chambers' Encyclopedia, title "Clearing House;"
Walker on Banking Laws, 68–70;
Grant's Law of Bankers, 52;
Warwick *vs.* Rogers, 5 Manning & Granger, 348;
Boddington *vs.* Schlencker, 4 Barnwell & Adolphus, 153.

In the United States:—

Morse on Banks (2d Ed.), 450–457;
Johnson's Encyclopedia, title "Clearing House;"
Bolles on Banks and their Directors, sections 420–426 (pages 412 to 423);
Fowler *vs.* New York Exchange Bank, 67 N. Y., 138;
Crane *vs.* Clearing House, 32 W. N. Cases, 358;
which arose on part of this very transaction.

On March 20th, 1891, the runner of the Keystone Bank appeared at the Clearing House room at 8.30 A. M. (being the hour the morning exchanges are made), with sealed envelopes purporting to contain $70,005.46 of drafts and checks against the other banks. There is no evidence as to what was in these packages, nor of their value. This runner delivered this $70,005.46 directly to the clerks of the receiving banks, and received specific receipts therefor from the various receiving banks. (Exhibit No. 11, Record, page 71.) Other banks presented to the Keystone Bank divers packages alleged to contain $117,035.21 of drafts and checks drawn on Keystone Bank, and received from the Keystone Bank receipts therefor. (Exhibit No. 14, Record, page 73.) The appellees never saw these packages, never handled them, and have no knowledge of their contents. There is no evidence of what this $117,035.21 consisted, nor of the validity or value of the drafts supposed to be contained therein, nor whether they were valid charges against the Keystone Bank. This made a balance of $47,029.75 on that morning's exchange against the Keystone Bank. After receiving from the other banks the packages alleged to contain $117,035.21, the Keystone Bank clerk left them in the custody of the manager of the Clearing House Association as pledge that the Keystone Bank should pay the $47,029.75 difference by twelve o'clock of that day. (Record, page 17.)

The reason the packages were left by the Keystone Bank in the custody of the Clearing House manager was this: Under article 17 of the Clearing House Rules (Record, page 89) all banks were required to deposit collateral security for the payment of their daily balances, but in December, 1890, the Keystone Bank requested that all security held under this

article for the payment of its daily balances should be transferred to what was known as the loan certificate account, so that the Keystone Bank could receive further advances upon this security, and this was done, and the Keystone Bank thereupon borrowed and received large sums of money thereon; and in consideration thereof the Keystone Bank agreed that, in lieu of security for payment of balances, the manager should daily retain the packages which were presented against the Keystone Bank as security that on the same day at twelve o'clock the Keystone Bank would pay the daily balance due by them. This agreement was made on December 30th, 1890, and all collaterals held by the Clearing House Committee as security for daily balances were delivered to the Keystone Bank, and it receipted therefor by its agent, J. G. Devine. (See receipt, Exhibit 15, Record, page 74.) The appellant seems to consider that the agreement was that these packages should be retained by the Clearing House manager as a pledge that the Keystone Bank would generally pay $47,029.75. But that was not the whole agreement. It was that the Keystone Bank would pay $47,029.75 *before twelve o'clock of that day.* (Record, page 17.) Otherwise all checks and drafts might become worthless and all indorsers thereon would be discharged.

After this date the sole security for the payment of the daily balances due at the morning exchange was the agreement of the Keystone Bank that its messenger, after receiving the packages from the creditor banks, should leave these packages with the Clearing House manager until the debtor balance due on that settlement should be paid by the Keystone Bank in cash before twelve o'clock; and this agreement was acted on daily from the date it was made until the suspension of the bank. (Record, pages 42, 45.)

In retaining the packages the manager was obviously acting as agent for the creditor banks at each settlement.

Nat. City Bank *vs.* N. Y. Gold Bank, 101 N. Y., 595.

And in the present case the manager testified:—

"I receive the balances due the Clearing House in these settlements from the debtor banks and pay them over to the creditor banks.

"Q. Do you pay them over to the creditor banks before you get the money from the debtor banks?

"A. Never; no, sir.

"Q. For whom are you acting when you pay the money over to the creditor banks?

"A. I am acting for the debtor banks."

(Record, page 50.)

The Keystone Bank did not pay the $47,029.75 by twelve o'clock. It has never paid it. At 10 A. M. on March 20th, 1891, it closed its doors. Up to this time there is no evidence of the insolvency of the Keystone Bank. On the contrary, the Clearing House manager had previously been officially informed by the United States National Bank Examiner that the said bank was solvent. (Exhibit No. 23, Record, page 81.) The Clearing House manager thereupon notified all the banks who had presented the $117,035.21 that they must redeem these packages by paying cash therefor, and the banks accordingly paid $117,035.21 in cash and received back the packages which they formerly held against the Keystone Bank.

This was obviously the only course to be pursued. The packages could not be delivered to the Keystone Bank, for it had not paid the difference of $47,029.75 for which they were left as security. It has never paid or offered to pay that sum. The settlement could not be made under article 11 of the Clearing House constitution by calling upon the other banks to pay the $47,029.75, and thus delivering the packages to the Keystone Bank, for the Keystone Bank was closed and in the hands of the Government Examiner. There was no one at the Keystone Bank who could receive and charge off the checks and notes in the packages, and, even if there had been, no one at the bank had authority so to do. The *status* of the Keystone Bank's debits and credits was fixed at the time the Examiner closed the bank and took charge of its affairs, and every check and note charged off or credited after closing would have been a direct and unlawful preference against the statute. The course provided by article 11 relates solely to cases where the defaulting bank has *received* the packages.

The packages could not be retained by the Clearing House manager, for neither he nor the association had anything to do with exchanges or packages, and as promptness is of the essence of commercial paper, by retaining this mass of notes and drafts every indorser thereon would have been discharged. The packages could not be handed back to the other banks simply upon the payment of $47,029.75, for this would have been unfair to the Keystone Bank. But one course remained to pursue, viz., to compel the banks who had presented these packages to redeem them in full. Accordingly the manager required every bank presenting a package to immediately come forward before twelve o'clock and withdraw the package it had presented and pay in money the full cash value thereof. This may have been a hard settlement for the banks presenting the packages or for their customers, but it was a settlement in ease of the liability of the Keystone Bank. A list of the banks who had presented the $117,035,21 of packages against the Keystone Bank, and who received the receipts of the Keystone Bank therefor, and who subsequently redeemed those packages by paying cash in lieu thereof, will be found in Exhibit No. 14, Record, page 73.

This left $117,000 in cash in the hands of the Clearing House manager. This was cash contributed by banks other than the Keystone. The Keystone Bank paid no part of it, and was not entitled to it. Otherwise, the absurd result would follow that the Receiver upon paying $47,029 would be entitled to receive $117,031 in cash, whereas all that the Keystone Bank or its Receiver was ever entitled to was to *pay* $47,000 in cash and get *packages* supposed to contain $117,000 of checks and drafts on itself, which would be worth simply the dividend thereon, as these checks and drafts could not be charged off against the respective drawers thereof after the closing of the Keystone Bank. To do so would have been a direct preference as to every such drawer.

The $117,000 of cash was not contributed by the banks for the benefit of the Keystone Bank. To do so, as Judge Butler in his opinion states (Record, page 120), "would have been an act of folly incompatible with sanity." It was other banks' money contributed for Clearing House purposes. Primarily

it was contributed to effect the daily settlement of $47,029.75, and secondarily it was contributed for the other Clearing House purposes.

At this date the Keystone Bank was indebted to the Clearing House Association for the balance due by it for its daily balances on the settlements with the Clearing House on March 20th, 1891, and on March 19th, 1891, and it also owed divers banks, members of the association, sums represented by duebills issued by the Keystone Bank, being sums which those banks on the previous day had demanded from the Keystone Bank, but which the said bank, to preserve its cash, had preferred to pay by an assignment of its next day's credits at the Clearing House, and which assignments are known as Clearing House duebills; and the Keystone Bank also at this date owed the Clearing House Committee (the appellees) $335,000 for money loaned by appellees to said Keystone Bank.

The reason the banks put up $117,035.21 of their own money was for the very purpose of enabling the manager of the association to make the Clearing House settlements by paying the balances due by the Keystone at the Clearing House, viz., to pay the Keystone Bank's debt at the Clearing House. They did not contribute money to be paid *to* the Keystone Bank.

The appellant's allegation in his statement of the case, that—

> "The bill was filed to recover the sum of $70,005.46, *being the amount of checks on other banks theretofore deposited with the Keytone National Bank*, and of which it was the holder and owner, and to the proceeds of which it was entitled, but which said proceeds were paid to the manager of the Clearing House Association after the insolvency of said Keystone National Bank, and after it had been taken possession of and closed by the Bank Examiner,"

is wholly erroneous. The proceeds of the checks presented by the Keystone Bank against the banks never came into the hands of any one in the Clearing House. The $117,035.21 which was paid to the Clearing House manager was a sum paid for a totally different set of packages, viz., being packages *against* the Keystone Bank presented by the other banks.

The $117,035.21 was paid partly by different banks from those paying the $70,005.46, and partly by the same banks in different proportions. The banks who paid the $70,005.46 in the exchanges through the Clearing House appear in Exhibit No. 11. (Record page 71.) The banks who paid the $117,035.21 in cash appear in Exhibit No. 14. (Record, page 73.) The difference is manifest. Thus, to instance particular banks, the Commercial Bank did not pay any part of the $70,005.46 because the Keystone Bank held no package against that bank; yet the Commercial Bank paid part of the $117,035.21 because it held packages against the Keystone Bank. So of the Produce Bank. On the other hand, the Southwark, Commerce, Eighth, and Northern Banks all paid part of the $70,005.46 but paid no part of the $117,035.21. So the banks which paid both sums did so in different proportions. Thus the Philadelphia Bank only paid $122.99 of the $70,005.46, but paid $24,547.84 in cash as part of the $117,035.21, and so through the entire list of banks.

The credit of $117,035.21 was therefore applied to pay the various debits due by the Keystone Bank, viz.:—

To balance due by Keystone Bank for daily balance on its A. M. exchange with Clearing House on March 20th, 1891		$47,029 75
To balance due by Keystone Bank for daily balances on its runners' exchange with Clearing House on March 19th, 1891		23,031 34
To balance due by Keystone Bank upon daily balance on its A. M. exchange with Clearing House on March 19th, 1891		359 08
To payment of duebills issued by the Keystone National Bank on March 19th, 1891, payable in exchanges of March 20th, 1891, and held by the following banks:—		
Corn Exchange Bank	$5,000 00	
Third National	1,812 90	
Philadelphia National	800 00	
Independence	3,000 00	

Independence	$6,000 00	
Girard	1,193 94	
		$17,806 84
To partial repayment of indebtedness of Keystone Bank to Clearing House Committee...		28,808 10
		$117,035 21

The first above-mentioned four items were the amounts which the Keystone Bank owed on the exchanges of March 19th, 1891, and were by the very nature of Clearing House settlements payable from the exchanges. Thus, as to amount due for daily balances, there are two daily exchanges between the banks—one at 8.30 A. M., known as the morning exchange, and one at 11.30 A. M., known as the runner's exchange. Balances due at the morning exchange are paid in cash; balances due at the runner's exchange are paid by runner's duebill, which is deposited by the manager of the Clearing House in the depository bank and paid out of the exchanges of the debtor bank at the next morning exchange. The agreement of December 30th, 1890, whereby the Keystone Bank agreed thereafter to leave its packages in the custody of the manager until it should pay the balance against it in cash, was for this very purpose.

Moreover, on December 1st, 1890, the fundamental articles of association were amended to meet the payment of this runners' duebill.

The amendment of the constitution was as follows:—

"Provided that the amount of the duebill given by the defaulting bank in settlement of its debit balance in the runners' exchange of the previous day and deposited by the Clearing House in its depositary bank shall be deducted from the TOTAL CHARGE of such bank and shall be the first claim against the securities deposited by the defaulting bank under article 17."

This amendment was presented for consideration on November 3d, 1890, and at the next meeting of the association,

on December 1st, 1890, it was unanimously agreed to by all the banks, including the Keystone Bank.

See Record, pages 40, 41;
Constitution of Clearing House, article 11. Record, page 87.

This was a perfectly valid agreement for the bank to make, and the Receiver, of course, takes subject to the agreement.

Casey *vs.* Credit Mobilier, 2 Woods, 77;
Scott *vs.* Armstrong, 146 U. S., 499.

The object of the amendment was twofold. First, to protect the depositing bank, and, secondly, to make the runners' duebill a first charge against the credits and assets of the defaulting bank.

This was originally admitted by the bill in equity (see the second prayer, Record, page 6), where the equity asked for was, "after deducting any daily balances remaining due and unpaid."

The payment of the $17,806.84 of duebills to the banks above mentioned was in pursuance of the terms of the duebills. Those duebills were an assignment by the Keystone Bank on March 19th, 1891, of so much of the Keystone Bank exchanges on the following day as should be necessary to pay the same. This is expressed on the face of the duebills. By their terms they are payable through the exchanges of the following day. (Exhibit No. 18, Record, page 76.) The duebills were given by the Keystone Bank for cash, and it had received the full value of them, and the object of duebills is to enable the bank giving them to avoid paying cash over the counter. They are not payments made on the day the duebill was presented, but are payments made on the preceding day, a "duebill" being given for purposes of convenience, and such "duebills" are in all respects, when presented in the next morning's exchange, equivalent to an assignment of so much of the drawing bank's exchanges as shall be necessary to pay such duebill.

They were given for full value; they were for a certain

sum; they were payable at a particular time, at a particular place, and from a particular fund, to be paid by the Keystone Bank at that designated time and place, and were in all respects an assignment of so much of that fund as should be necessary to pay them if said duebills were then and there presented.

If the Keystone Bank had not given the duebills it would have had to give cash the preceding day, or if it had not the cash it would have been obliged to realize so much of the $70,005.46 which it presented to the Clearing House the next day as would have been necessary to obtain this amount of cash. Hence just so much more cash passed into the Receiver's hands; and if the Keystone Bank had not the cash, just so much less of the $70,005.46 would that bank have been enabled to present at the Clearing House the next morning. (Record, pages 50, 57.)

These duebills were judicially construed in Dutton *vs.* Merchants' Nat. Bank, 16 Philadelphia Repts., 94, wherein it was said:—

> "There exists in the city of Philadelphia and elsewhere an association known as the Clearing House. This association is composed of the banks of the city, and one of its chief objects seems to be to afford a method by which the balances between the banks may be readily settled, and the danger, trouble, and expense of individual bank adjustments, either in coin, notes, or paper, be wholly avoided. Another principal object seems to be to facilitate the payment of drafts through the banks and thus gain valuable time. As an illustration, if one holds a draft upon a bank in which he is not a depositor, he simply presents the draft to the bank upon which the draft is drawn and receives what is called a Clearing House duebill, and this duebill, prepared according to an established form, may be at once deposited with the bank of which the holder is a customer, or may be presented at any bank, and is treated as cash, and accordingly, but only in the exchange through the Clearing House, paid. * * * The whole tenor of the instrument, together with the usual custom of the banks and

of the mercantile community, tend to establish the fact that these instruments are regarded as payable to bearer, as such deposited as cash, and paid on presentation by the bank of issue through the Clearing House."

The balance, viz., $28,808.10, was applied in partial payment and setoff of the indebtedness of the Keystone Bank for loan certificates issued by the Clearing House Committee, which indebtedness at that time amounted to the sum of $335,000. (Record, page 48.)

Every dollar of the $70,005.46 was applied to the payment of the debts of the Keystone Bank, and that bank received the full benefit and value thereof. (Record, page 57.)

The Receiver also obtains the full benefit of this payment, for it enables him to receive $70,005.46 of collaterals which would otherwise have been applicable to the payment of this indebtedness of the Keystone Bank. The Clearing House Committee held collaterals for the payment of the Keystone Bank's indebtedness in loan certificate account, and these collaterals thereby to this extent became released in favor of the Receiver.

The appellant argues that the Clearing House manager—

"Must either accept the $70,005.46 in part payment of the $117,035.21 and deliver the same to the Keystone Bank, as provided in article XI., or else return the $70,005.46."

This is a confusion of ideas. It ignores the fact that the Keystone Bank owed $47,029.75 for its daily balance due on March 20th, 1891, and also owed $41,197.36 for its daily balance and duebills due on the preceding day. The effect of the appellant's argument would be to present the Keystone Bank with $47,029.75 and make it *a creditor bank*, when in reality it was *a debtor bank* and entitled to nothing until it should have paid the sum of $47,029.75. The settlement under article XI. only applies when the debtor bank has taken away the packages presented against it and has given other security for payment of its daily balance. In this case the Keystone Bank had not taken away the packages, but had

deposited them as security for its daily balances, and the Clearing House Association had *no* security for said daily balances other than the packages deposited by the Keystone Bank.

The statement in appellant's argument that—

> "The exchange was not, in fact, made, but instead thereof the exchanges against the Keystone Bank were withdrawn and charged back against the parties to whose credit they stood with the banks holding them, and the settlement was completed as though no exchanges had been presented at all against the Keystone Bank,"

is erroneous. The appellant overlooks the fact that the banks substituted full value for the packages they withdrew, viz., they substituted in lieu of these packages the sum of $117,000 in cash, being the full alleged cash value of said packages. The exchange had been made at 8.30 A. M. and the balance sheet adjusted, and all debits and credits were finally fixed at that hour, and upon receiving the substituted cash for the withdrawn packages settlement was immediately made upon the balance sheet. The morning settlement was never annulled. On the contrary, it was fully carried out and effected, and to effect it the other banks, although perhaps under no legal liability to put up more than $47,000 to effect this settlement, yet voluntarily put up $117,000 in cash. The balance sheet, which appears on Record, page 64, was never altered or annulled in any way. It was fully carried out. The balance sheets and settlements thereon are never undone by anything which subsequently occurs. The balance sheet results from slips prepared from indorsements of sealed packages, and even if the packages presented do not contain the checks they purport to contain, or if the checks are forgeries, or if the amount indorsed is the result of erroneous addition, yet the balance sheet and the settlement thereon is not affected thereby, and the errors must be corrected between the respective banks outside of the Clearing House. (Clearing House constitution, article XII.; Record, page 87.) As said by the Supreme Court of Pennsylvania in Philler *vs.* Patterson, 168 Pa. St. Rep., 481, "At the close of each meeting the amount due to and from each bank is *definitely* ascertained." In fact, the balance sheet and settlement thereon

could not be altered without the consent of the other banks members of the Clearing House Association. Hence Judge Acheson, in his opinion in this case, says (Record, page 116):—

"The rights of the parties were fixed when the bank was closed. As between the Keystone National Bank and the other banks the morning exchange had been already consummated. The packages of exchanges on the one side and the other had been delivered and receipted for. The exchange itself was an accomplished fact. What remained to be done was the payment by the Keystone National Bank of its debtor difference of $47,029.75 to the Clearing House manager. To insure this payment by twelve o'clock, the bank, under its arrangement with the Clearing House Committee, left its sealed package in the hands of the Clearing House manager. The bank, however, defaulted, and what afterwards occurred in the Clearing House was in consequence. The situation was unprecedented. The bank had been closed by the Government officer. The pledge was not an ordinary one. The sealed packages on temporary deposit with the Clearing House manager did not contain assets of the bank, but checks and drafts drawn upon it, and other evidences of its indebtedness. As the packages contained commercial paper, prompt action might be necessary to hold indorsers and drawers. In the emergency occasioned wholly by the default of the Keystone National Bank, whose supposed equity is the foundation of this bill, the Clearing House Committee made the call upon the other banks already mentioned. Whether those banks were bound to comply with that demand to its full extent we need not inquire. Under the stress of the situation they saw fit to do so, and paid into the Clearing House of their own money $117,035.21, and relieved the manager of his custody of the packages. Did this work an annulment of the morning exchange? We cannot so conclude. That deduction would be highly unreasonable. That the banks which paid in this money intended such a result is incredible. The whole transaction negatives the idea of intended rescission. Indeed, the other banks had no right to undo the morning exchange without the concurrence of the Keystone National Bank. Nor was it to their interest to disturb what had taken place. Why should they pay this large sum of money into the Clearing House in relief of the debtor bank? Assuredly, this money was not paid for the benefit or use of the Keystone National Bank. The other banks made the payment in promotion of their own interests as members of the association—primarily in order that they might make settlements *inter se*. This they were at liberty to do without relinquishing any of their rights or equities as against their defaulting associate. The obligations of the Keystone National Bank to pay its debtor balance remained in full force. Without the payment of the $47,029.75 the bank was not entitled to the return of the deposited packages. Hence those packages were rightfully withheld from the

bank. Nothing is better settled than the right of a transferee of a pledge to hold it until the debt for which it was given is paid; *Story on Bailments*, section 327; *Donald* vs. *Suckling*, Law R., 1 Q. B., 585; *Talty* vs. *Freedman's Saving and Trust Co.*, 93 U. S., 321. This principle is peculiarly applicable here, for the Clearing House manager held the deposited packages for the benefit of the creditor banks. It is our judgment that the morning exchange between the associated banks was valid, and was not avoided, or the rights thereunder of the Clearing House Association or of the creditor banks impaired by what subsequently occurred."

The circuit judge originally decided this case upon the ground that the agreement under which the $117,035.21 was retained by the Clearing House manager constituted a pledge for a specific purpose, and that the manager could not apply the Keystone Bank credit of $70,005.46 to any purpose not specifically mentioned in the pledge. But, as pointed out by the Court of Appeal, the learned judge overlooked the fact that the Keystone Bank *never complied with the terms of the pledge.* The pledge was to pay $47,029.75 by twelve o'clock of that day. The Keystone Bank did not do so. It has never done so. All the banks who deposited the pledged packages were compelled at twelve o'clock to withdraw them, as the settlement sheet had been made, and were required to redeem them by paying their full cash value. This resulted finally in the simple case of a credit to the Keystone Bank of $117,035.21, and after paying the daily balance of $49,029.75 it resulted in a credit to the Keystone Bank of $70,005.46. This credit stood in the same plane as any other credit.

Under appellant's argument the Keystone Bank is far better off than if it had complied with the pledge, for under appellant's argument the Keystone Bank receives $70,005.46 in cash, and it does *not* pay $47,029.75 in cash; thereby, first, receiving the full value of checks and drafts on which it only pays twenty per cent. in dividends; secondly, receiving cash in full for an unknown lot of checks and drafts whose value has never been proved, and which might be worthless as being overdrafts or forgeries, and hence not chargeable against the Keystone Bank; and, thirdly, receiving in full

cash for checks and drafts of which there is no evidence that a dollar thereof was ever claimed against the Keystone Bank.

The equity which appellant seeks is based upon its default in its obligations, and it seeks to receive a premium of $97,115 for so defaulting in its payment. Thus, under appellant's argument, appellant by *not* complying with the terms of the pledge gets $70,005 in cash and does not pay $47,000 in cash which it owes. Whereas, if appellant had complied with its pledge, appellant would have paid $47,000 in cash and would have received a bundle of checks and drafts aggregating $117,000 worth simply the dividend due thereon, which was seventeen per cent. (that being all the Keystone Bank paid), or $19,890. The difference between fulfilling the pledge and defaulting therein is therefore $97,115 in favor of the default. This is clearly pointed out in the opinion of Judge Butler in the Court of Appeals, who says (Record, page 120):—

> "The erroneousness of the decree may be illustrated by another statement. The Keystone Bank cannot claim to be placed in a better position than it occupied at the date of its failure, or to be benefited by its refusal to keep its contract and the action forced on the other banks thereby. Yet it is indisputable that the decree does place it in an infinitely better position—gives it, in effect, over $80,000 as a premium for its faithlessness. Let us see if this cannot be demonstrated. If the bank had kept its contract it would have paid out $47,000, which would have beeen lost to the Receiver and creditors by diminishing the assets for distribution that much. It would then receive $117,000, not of money, but of its own nearly worthless obligations, for cancellation. The receipt of these obligations would have benefited the Receiver and creditors just to the extent of the dividend the obligations would draw if not canceled. Now, supposing the dividend rate to be thirty per cent. (which is doubtless much too high), the dividends on the $117,000 of obligations would be $35,100. To redeem and cancel them costs $47,000; deducting the $35,100 from this shows a *loss* to the Receiver and creditors of $11,900 as the result of carrying out the contract. The Receiver

> acted wisely, therefore, in not carrying it out; he saved $11,900. But because he did not carry it out and the committee and the other banks entered into the subsequent transaction on their own account and for their own exclusive benefit, he is given an additional sum of $70,000; and is thus made a gainer in $81,900 by the *failure to keep the contract.*"

The learned judge is correct in stating in the above extract that the sum of thirty per cent which he allowed as probable dividends was "doubtless much too high." As matter of fact the Keystone Bank has paid but seventeen per cent. in dividends, and under appellant's theory this increases the premium paid to the Keystone Bank to break their contract to $97,115.

The matter may be viewed in one of two aspects, viz., either as a sum of $70,005.46 resulting from the pledge of packages supposed to contain $117,035.21, or as the sum of $70,005.46 resulting from the Keystone Bank having presented this amount of checks or drafts against other banks.

1. If treated as the sum of $70,005.46 resulting from the pledge of packages supposed to contain $117,035.21.

The terms of the pledge were that the Keystone Bank, upon paying $47,029.75 in cash before twelve o'clock, should receive *packages* supposed to contain securities of unknown value. The Keystone Bank did not comply with the pledge. It no longer became entitled to receive those packages. The pledge became non-existent. The packages were withdrawn. The Keystone Bank never paid $47,029.75 nor a dollar thereof. Other banks paid the manager $117,035.21 of their own money. The appellant overlooks the fact that this $117,035.21 was the money of the other banks, and not of the Keystone. This money was not pledged by the Keystone Bank. Such money was not subject to the pledge of the packages. The Keystone Bank cannot profit by a pledge which it violated. The pledge was *not* that the Keystone Bank should receive $70,005.46 in cash. It was *not* that the Keystone should receive $70,005.46 cash for what might be worthless securities. It was *not* that the Keystone Bank

should receive $70,005.46 in cash for what it only paid seventeen per cent. in dividends; and the pledge was *not* that the Keystone Bank should receive $70,005.46 in cash for claims of which there is no evidence that a dollar thereof has ever been presented against said bank.

The $117,035.21 received by the manager was not the Keystone Bank's money. If that bank had not appeared at the Clearing House, that same money would have been there. If Keystone had not delivered any packages, this same money would have been there. The $117,035.21 was not paid because of any money or packages which the Keystone had presented. It was not paid for the use of the Keystone. There is not even any proof that any of the items supposed to be in the withdrawn packages, amounting to $117,035.21, were ever presented against the assets of the Keystone Bank. The balance of $70,005.29 in the manager's hands due the Keystone Bank was simply the result of the Keystone's transactions with other banks and was incident to every Clearing House settlement.

We never received any money from the Keystone Bank. The only amount we received was $28,000, which the manager paid us from money which came from banks *other* than the Keystone, and that $28,000 was applied to debts of the Keystone Bank.

Hence, whether arising by reason of packages having been presented *against* the Keystone Bank, or by reason of packages having been presented *by* the Keystone Bank, the result is simply—

2. A general credit of $70,005.46 due the Keystone Bank.

This simply presented a plain case of mutual credits. The Keystone Bank owed the appellees in trust for the association the sum of $335,000. It owed the association the sum of $47,029.42 for daily balance of March 20th, 1891, and the sum of $23,390.42 for daily balance of March 19th, 1891. It owed other banks, members of the association, the sum of $17,806.84.

The setoffs existed prior to the time of insolvency. The transfer of packages had been made before the Keystone

Bank was closed. The liens, equities, and rights of the various parties entitled in and to the Clearing House settlements occurred at the very time the exchange was made. The case is one of mutual credits. It was only by reason of being a member of the Clearing House that the Keystone Bank obtained credit. If it had not belonged to the association then all the other banks would have declined to pay the drafts held by the Keystone Bank, and in a suit would have set off the drafts due by the Keystone Bank to them.

If the suit was against the individual banks these banks would have set off the duebills they held, and by consent of their co-associates could have set off the debt due such co-associates, viz., the association. If the suit was against these appellees they would set off the $335,000 due them by the Keystone Bank, and by consent of the association could set off the debts due to the association.

The appellees would have been entitled to have applied the entire $70,005.46 in reduction of the $335,000 due them by the Keystone Bank. No unlawful preference is created by such setoff.

Scott *vs.* Armstrong, 146 U. S., 499, is directly in point. There the transaction was between two banks, and the court said:—

> "In the case at bar the credits between the banks were reciprocal and were parts of the same transaction in which each gave credit to the other on the faith of the simultaneous credit, and the principle applicable to mutual credits applied. * * * The argument is that these sections (of the Revised Statutes), by implication, forbid this setoff, because they require that after the redemption of the circulating notes has been fully provided for the assets shall be ratably distributed among the creditors, and that no preferences given or suffered in contemplation of or after committing the act of insolvency shall stand. And it is insisted that the assets of the bank existing at the time of the act of insolvency include all its property, without regard to any existing liens thereon or setoffs thereto.
>
> "We do not regard this position as tenable. Undoubt-

> edly, any disposition by a national bank, being insolvent or in contemplation of insolvency, of its choses in action, securities, or other assets, made to prevent their application to the payment of its circulating notes or to prefer one creditor to another is forbidden, *but liens, equities, or rights arising by express agreement or implied from the nature of the dealings between the parties and not in contemplation thereof are not invalidated.* The provisions of the Act are not directed against all liens, securities, pledges, or equities whereby one creditor may obtain a greater payment than another, but against those given or arising after or in contemplation of insolvency. *Where a setoff is otherwise valid, it is not perceived how its allowance can be considered a preference, and it is clear that it is only the balance, if any, after the setoff is deducted, which can justly be held to form parts of the assets of the insolvent.* The requirements as to ratable dividends is to make them from what belongs to the bank, *and that which at the time of the insolvency belongs of right to the debtor does not belong to the bank.*"

So in a case wherein this appellant was plaintiff, Yardley *vs.* Clothier, 51 Federal Reporter, 506, the Court of Appeals said:—

> "The application of the rule that mutual accounts are to be adjusted in such manner that only the balance that constitutes the debt to be recovered is, as has been seen, established by a long line of judicial precedents, and is not forbidden by the language or meaning of the National Banking Act."

The presentation of the packages at the Clearing House, [illegible]ed these liens or setoff to arise, did not constitute an unlawful preference within the prohibition of section 5242 of the Revised Statutes.

Under the circumstances of this case that statute has no application.

Section 5242 only applies to transfers—

(1.) Made after commission of an act of insolvency, or in contemplation thereof;

(2.) Made with a view to prevent the application of bank assets in the manner prescribed by the statute, or with a view to the preference of one creditor to another.

The transfer must be made *with a view to giving preference.*

Tuttle *vs.* Freilinghuysen, 38 N. J. Eq., 12;
Casey *vs.* Credit Mobilier, 2 Woods, 77;
Yardley *vs.* Clothier, 51 Federal Reporter, 506.

Neither of these exist in the present case. The presenting of the exchanges at the Clearing House was not with a view of insolvency or to give a preference. In fact, there could not be an intent to prefer any creditor when, until the exchange had been effected, it was impossible to know what particular banks would be such creditors or in what amount. The transaction in the Clearing House by the Keystone Bank was with a view of continuing business and of obtaining mutual credits, and the existence of Clearing House associations is recognized by the statute of July 12th, 1882, section 12 (22 Statutes at Large, 162). The transfer of packages had been made before the Keystone Bank was closed, and all rights arose upon the presentation by the Keystone Bank of the $70,005.46 and all setoffs then matured. The action of the Bank Examiner later in the day was totally unexpected.

The law does not condemn *every* transaction which may result in the payment of a just debt. It does not frown upon transactions in the usual course of business made with an endeavor to continue business and procure additional credit. On the contrary, it encourages them. It is not the policy of the law to restrain efforts of those in doubtful financial positions, whether persons or corporations, to resuscitate themselves. It does not paralyze all action on the part of the debtor from an uncertain period when he is in doubt whether he can or cannot recover. It is not the policy of the law to force men and corporations into bankruptcy and insolvency, but every honest attempt to restore a doubtful financial condition is encouraged and aided.

These doctrines particularly apply to banks. The consequences of the opposite construction would be disastrous and far reaching, and hence banking transactions have been in-

variably sustained unless the bank was actually closed or had decided to close, and payments resulting from such transactions are not unlawful.

Citizens' Nat. Bank *vs.* Dowd, 35 Fed. Rep., 340;
Armstrong *vs.* Chem. Nat. Bk., 41 *Id.*, 237.

The statute is explicit. It must be made after insolvency or in contemplation thereof with a *view* to prefer. If not made with this view to prefer it will not be set aside, although it results in paying an honest debt. If made in the ordinary course of business in the expectation of continuing business and obtaining credit, it will be encouraged.

The National Banking Act and the thirty-fifth section of the Bankruptcy Act were similar, and under similar provisions in the Bankrupt Act it has been held that—

Transfers made in good faith, with the expectation that by so doing the person will continue his business, will be upheld, and exchanges of value may be made at any time, though one of the parties to the transaction be insolvent.

Tiffany *vs.* Lucas, 15 Wallace, 410;
Cook *vs.* Tullis, 18 Wallace, 332;
Clark *vs.* Island, 21 Wallace, 360.

In National Security Bank *vs.* Butler, 129 U. S., 223, where a transaction was held to be a preference, it is expressly put upon the ground that it occurred after the bank had actually failed and stopped business, and hence—

> "It could not be said that the transfer was made with the intention of going on in the business, nor could it have been contended that it was made to save the credit of the bank."
> 129 U. S., 230.

In the present case both the bank and the Receiver get the full benefit of the transfer, for the money was applied to the payment of the Keystone Bank's indebtedness, thereby releasing $70,005.46 of collaterals held by the Clearing House Committee for the payment of loan certificates, which would

otherwise have been applicable to the payment of the amounts to which the $70,005.46 was applied.

The case has been thus far considered as if the appellants, the Clearing House Committee, were proper parties defendants. It is submitted they are *not.*

An individual decree for over $70,000 is sought against them.

The appellants act solely as agents for known principals. (Evidence, page 35.)

Fowler *vs.* N. Y. Ex. Bank, 67 N. Y., 138;
Nat. City Bank *vs.* New York Gold Bank, 101 N. Y., 595.

They are a voluntary committee, serving without compensation. They have nothing to do with exchanges effected directly between the banks. The duties and liabilities of appellants are strictly defined by the constitution of the Clearing House. (Article 5, Record, page 85.) The specific banks who received the $70,005.46 appear by Exhibit No. 11. (Record, page 71.) The banks who presented the $117,035.21, and subsequently redeemed those packages by paying the whole amount of cash therefor, appear by Exhibit No. 14. (Record, page 73.) The banks who received payment for the duebills appear on Record, page 24.

The only sum of any kind received upon that day by these defendants was $28,808.10, and that sum was not part of the $70,005.46 of packages delivered by the Keystone Bank to the other banks, but came out of a sum of $117,035.21 of cash received from a different set of banks, who presented packages *against* the Keystone Bank and had no connection with the $70,005.46 for which the Keystone Bank was a creditor bank. (Record, page 47.)

In other words, if defendants in this matter can be treated as a distinct entirety from their principals, the only money

they received was $28,808.10, and that was not the Keystone's money, but the result of transactions with all the national banks, including the Keystone, on that day. And every dollar of that was applied in payment of Keystone's debts and operated as a release in its favor of a corresponding amount of collateral.

The effect of a decree against these defendants would be a decree against agents acting for known principals.

No such case has ever been maintained against a Clearing House committee or association. The action, if maintainable, lies against the particular principal benefited by the individual transaction.

And hence in

Reynolds *vs.* Chettle, 2 Campbell's *Nisi Prius* Repts., 596,

it was decided that a presentment of a bill at the Clearing House is a presentment at the particular bankers on whom the bill is drawn.

The appellants argue that appellees are proper defendants because the bill averred, and the answer admitted, that they had charge of the assets of the association, and sue and are sued. But this refers only to matters wherein they are properly liable, as for loans advanced to particular banks and securities received therefor, and this stands on an entirely different basis. (Record, page 48.) The entire answer and all the evidence clearly proved that the appellees had no liability of any kind for matters arising upon exchanges of packages or payments of balances resulting therefrom.

The case of Crane *vs.* Clearing House Association, 32 Weekly Notes Cases (Pa.), 358, was decided upon part of this very transaction. The opinion of the court is annexed hereto.

A. T. FREEDLEY,
JOHN G. JOHNSON,
For Appellees.

[Copy of Report in 32 Weekly Notes Cases (Penna.), 358.]

COMMON PLEAS, No. 4, OF PHILADELPHIA COUNTY.

Common Pleas, No. 4. *March, 1893.*

Crane vs. *Clearing House.*

Clearing House—Rights and responsibilities of. Insolvent bank. Liability of Clearing House for amount of draft on solvent bank deposited in insolvent bank and passing through the Clearing House.

Sur rule for new trial.

Assumpsit by Augustus Crane, Jr., and Allbrook Parris, trading as Crane, Parris & Co., against the Philadelphia Clearing House Committee, to recover the sum of $1990, being the amount of a draft on the Fourth Street National Bank payable to the plaintiffs and deposited by them in the Keystone Bank on March 19th, 1891.

On the morning of March 20th the runner of the Keystone Bank presented his packages in the usual manner at the Clearing House. Among these packages, which were sealed, was one containing checks, drafts, &c., on the Fourth Street Bank amounting to $3728.77. The settlements of the day showed the Fourth Street Bank was a debtor in the sum of $126,347.60, which was paid, and the sum distributed among the creditor banks. The settlements of the Keystone Bank showed credits of $70,005.46 and debits of $117,035.21, making it a debtor in the sum of $47,029.75. The runner returned to the bank for the money, but the bank had closed its doors and has since been in the hands of a Receiver.

As soon as the insolvency of the Keystone Bank was reported, the manager of the Clearing House required from the other banks payment of the full sum of $117,035.21, due by the Keystone Bank, and the payment was duly made.

It was contended by the plaintiffs that the Clearing House thus received from the Fourth Street Bank payment of the draft in suit.

The facts are further stated in the opinion of the court.

The trial judge, Arnold, J., directed a verdict for the defendants.

H. Gordon McCouch and Richard C. Dale, for plaintiffs; A. T. Freedley, for defendants.

May 20th, 1893. Arnold, J. The Clearing House Association is an unincorporated association composed of forty of the national banks of this city. It is managed by a committee composed of the presidents of several of the banks. It furnishes a room in which the clerks or messengers of the several banks meet daily to make their exchanges directly between themselves, instead of being compelled to go around to the various banks to make their collections. In this room all exchanges are made between the banks. The clerk of each bank presents to the clerk of each of the other banks all the checks and drafts upon it held by his bank, and receives from the clerk of each of the other banks all the checks and drafts which it holds against his. All the checks and drafts sent to and received by the several banks are in sealed packages, which are never opened in the Clearing House room, the total amount thereof, but not the items, being marked on the outside of the envelope. Receipts are given directly by the clerks of the several banks to each other. Errors in the packages are rectified solely between the sending and receiving banks, and are not reported to the Clearing House manager. After these exchanges are made the amounts which are due by or to each bank are reported to the Clearing House manager, who makes up a sheet and adjusts the differences to be paid to or by each bank. Upon this sheet the debtor banks pay the amount due by them by paying the same to the Clearing House manager, who immediately distributes it to and among the creditor banks.

It is manifest that this system of settlement through a Clearing House is one of the necessities of a city in which

there are a large number of banks. Under the old practice the banks were compelled to send messengers to the others, so that the corps of clerks or messengers required was not only large and expensive to the banks, but the delay was sometimes injurious. By the Clearing House system collections are made promptly every day, instead of being delayed until the day after, as the banks are entitled to that much delay in presentment. It was found much better, therefore, for each bank to have one messenger, and for the messengers of all the banks to meet in one place, be set in motion at the same time, make their exchanges, strike their balances, and give or receive certificates for the amount due to or by the others.

The clearing-house system appears to have originated in Edinborough; at least the bankers of that place claim the credit of establishing the first clearing house; but the earliest one of whose transactions we have any record is that of London, which was founded in 1775, or perhaps earlier, as the record is not altogether clear on the subject. The ale house was in those times, as it still is, the general resort of persons about starting new enterprises, and it was there that the messengers or clerks first held their meetings; but as the system grew to such utility as to make it indispensable, the association procured rooms in Lombard Street for the convenience of exchanging checks and other securities, and reducing the amount of actual money used in the settlement of their accounts. This was the beginning of the clearing-house system. The New York Clearing House was established in 1853, Boston established one in 1856, Philadelphia, Baltimore, and Cleveland in 1858, Worcester in 1861, Chicago in 1865, and since that date the system has spread throughout the country, so that it is said by Mr. Bolles, in his book on Practical Banking, published in 1884, page 217, there were then thirty-one clearing houses known to exist in this country; and they also exist in Austria, France, Germany, Switzerland, Italy, and generally throughout the continent of Europe.

As before said, the checks and drafts by and upon the several banks are presented in sealed packages. The clearing house manager does not handle these packages, knows nothing

of their contents, and has no responsibility for or control over the same. Article II. of the constitution and rules of the Clearing House Association provides that "the responsibility of the association for exchanges is strictly limited to the faithful distribution by the manager amongst the creditor banks for the time being of all sums actually received by him." And this is all that the manager has to do—receive the amounts due by the debtor banks and pay the same to the creditor banks.

The Keystone National Bank of this city was a member of the Clearing House Association. It failed on March 20th, 1891. On that day, about 8.30 A. M., the messenger of that bank appeared at the Clearing House and presented sealed envelopes purporting to contain checks and drafts upon the other banks, amounting to $70,005.46. These he presented directly to the clerks of the other banks, and received receipts from them for the various amounts which the indorsements on the packages called for. The messengers of the other banks presented to the messenger of the Keystone National Bank packages of checks and drafts purporting to contain $117,035.21, thereby making the Keystone National Bank a debtor in exchanges to the other banks of $47,029.75. These packages of checks and drafts he left with the manager of the Clearing House and went back to his own bank to get the balance due by it, $47,029.75, but about ten o'clock that day the Keystone National Bank failed. It did not pay the $47,029.75, the difference in exchanges which it owed to the other banks, whereupon the manager of the Clearing House called upon the other banks to make up the whole sum of $117,035.21, for which they had received credit upon checks and drafts upon the Keystone National Bank, and handed back to those banks the packages containing said checks and drafts.

Among the packages presented by the clerk of the Keystone National Bank for payment on that day was one upon the Fourth Street National Bank, purporting to contain checks and drafts amounting to $3728.77, and part of that amount, in the sealed envelope, was a draft for $1990, which the plaintiffs allege that they had sent to the Keystone National Bank for collection. The sum total of checks

and drafts upon the Fourth Street National Bank in the exchanges on that morning was $488,075.01, while the sum total of checks and drafts upon other banks held by it was $361,727.41, making the Fourth Street National Bank a debtor to the extent of $126,347.60, which amount that bank paid to the manager of the Clearing House, to be paid to and among the creditor banks. The draft of $1990, which the plaintiffs allege they sent to the Keystone National Bank for collection, was therefore part of the sum of $3728.77 due to the Keystone National Bank, and was included in the payment by the Fourth Street National Bank of $126,347.60, which was received by the manager of the Clearing House Association and distributed among the creditor banks. But because the manager of the Clearing House Association required the other banks not merely to make up the sum of $47,029.75, the difference in exchanges due by the Keystone National Bank that day, but demanded the whole $117,035.21 claimed by the other banks, the plaintiffs have brought suit against the Clearing House Committee to compel it to pay the amount of their draft, which the Clearing House manager never saw or knew that it existed, which he was not employed to collect, and never did collect, and the earmarked amount of which was never in his possession. Their claim rests altogether upon the fact that inasmuch as the Clearing House manager required the other banks to contribute, not only the balance of $47,029.75, but also the $70,005.46 which the Keystone Bank claimed from the other banks, although he had the right to call for all or any part of the amount due by the other banks, therefore, because of the identity of these figures, the Clearing House Committee ought to be held responsible for the payment of this draft, although it never had the draft in its possession, or the proceeds thereof, or any knowledge of or control whatever over the same. The statement of this proposition seems to me to be its own refutation.

Vastly different are the facts in this case from those in Hackett *vs.* Reynolds, Lamberton & Co., 114 Pa., 328. There an open draft was sent to the bankers on whom it was drawn. They paid it by giving credit to the bank which sent it, which bank failed the same day. The owner of this

draft, who had put it in course of collection, proved his title to it, and it was held that the bankers, not having paid or advanced anything new upon it, but simply applying it to an old indebtedness, were not holders for value, and that they ought to pay the amount of the draft to the right owner thereof. It is manifest that neither the facts nor the law of that case give any aid or comfort to the plaintiffs in this.

In the present case the plaintiffs' draft was paid by the Fourth Street National Bank in the larger sum it paid into the Clearing House, where it was distributed among the creditor banks to pay the balances due to them by the debtor banks, including the Keystone, but which bank or banks got the money, and in what proportions, it is impossible to trace in the confusion of moneys and accounts. The plaintiffs have lost by reason of the insolvency of the bank which they selected as their agent, and to the Receiver of that bank they must look for payment. If they were depositors in the Keystone Bank, as it is highly probable they were, they will get a dividend when the Receiver of that bank settles his accounts. If they were not depositors, but the Keystone National Bank was their agent for collecting this draft, they may obtain a preference in an action against the Receiver. But they cannot compel the Clearing House Committee to pay them, because its manager never had their draft or its proceeds in his possession with knowledge of their rights, or of the existence of the draft, until demand was made upon it.

Rule for new trial discharged.